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# Collective Bargaining Agreement

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U.S. Census Bureau and  
American Federation of Government  
Employees (AFGE) Council 241 National  
Collective Bargaining Agreement (CBA)



*Continuing Partnership Together*

People first and mission always! Employees are our focus and collaboration is part of our mission. This contract was effective December 19, 2024.



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## Preamble

WHEREAS the American Federation of Government Employees (AFGE), Council 241, AFL-CIO (Union), and the U.S. Census Bureau (Agency), also referred to as the Parties, recognize that the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions that affect them, safeguards the public interest, contributes to the effective conduct of public business, facilitates and encourages the amicable settlements of disputes between employees and their employers' involving conditions of employment; and

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

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

THEREFORE, the Parties hereby agree to the Articles set forth in this Agreement.

## Definitions

1. **Business Day** means Monday through Friday during normal business hours.
2. **Days**, unless the context clearly indicates otherwise, means calendar and not working days.
3. **Denver Regional Office (RO)** refers to the Census Bureau location in Colorado.
4. **Employee** means a bargaining-unit employee covered by this Agreement and included in an appropriate bargaining unit as determined by the Federal Labor Relations Authority.
5. **Federal Wage System (FWS)** is a uniform pay-setting system that covers federal-appropriated fund and nonappropriated-fund blue-collar employees who are paid by the hour. The system's goal is to make sure that federal trade, craft, and laboring employees within a local wage area who perform the same duties receive the same rate of pay. The FWS includes 132 appropriated-fund and 118 nonappropriated-fund local wage areas. Successful labor-management partnership is the hallmark of the FWS, with labor organizations involved in all phases of administering the pay system.
6. **General Schedule (GS)** is the classification and pay system that covers the majority of civilian white-collar federal employees in professional, technical, administrative, and clerical positions. The GS classification standards, qualifications, pay structure, and related human resources (HR) policies are administered by the U.S. Office of Personnel Management (OPM) on a government-wide basis. Each agency classifies its GS positions and appoints and pays its GS employees filling those positions following statutory and OPM guidelines.
7. **Headquarters (HQ)** refers to the Census Bureau location in Suitland, MD, including the Bowie Computer Center (BCC).
8. **Jeffersonville** refers to the Census Bureau location in Jeffersonville, IN.
9. **Labor organization** means an organization composed of, in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose dealing with the Agency concerning grievances and conditions of employment, but does not include:
  - A. An organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;
  - B. An organization which advocates the overthrow of the constitutional form of government of the United States;
  - C. An organization sponsored by an agency; or
  - D. An organization which participates in the conduct of a strike against the government or any agency thereof, or imposes a duty or obligation to conduct, assist, or participate in such a strike.

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10. **Management official** means an individual employed by the Agency in a position where the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the Agency.
  11. **National Processing Center (NPC)** refers to the Census Bureau location in Jeffersonville, IN, including the Jeffersonville Contact Center (JCC), and the Tucson Contact Center (TCC).
  12. **Supervisor** means an individual employed by the Agency having authority in the interest of the Agency to hire, direct, assign, promote, reward, transfer, furlough, 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 firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority.
  13. **Tucson Contact Center (TCC)** refers to the NPC Census Bureau location in Tucson, AZ.
  14. **Workday** means a scheduled workday.



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## ARTICLE 1. EXCLUSIVE RECOGNITION AND COVERAGE

### Section 1.1

Pursuant to 5 U.S.C. § 7114(a)(4), the Department of Commerce (DOC), U.S. Census Bureau (Agency), enters into this Agreement with the AFGE, AFL-CIO (Union), the exclusive representative of the bargaining unit as certified by the Federal Labor Relations Authority (FLRA). Collectively, the Union and the Agency will be referred to as the Parties. In the Collective Bargaining Agreement, employees assigned to the bargaining unit will be collectively referred to as employees.

### Section 1.2

The Agency hereby recognizes that the Union is the exclusive representative of all employees included in the bargaining units defined in Section 1.3.

### Section 1.3

This is a multilocation Agreement applicable to the following areas:

1. Headquarters (HQ):
  - Included: All employees of the DOC, Census Bureau, HQ, in the Washington, DC, metropolitan area.
  - Excluded: All temporary employees of 90 days or less where there is no expectation of continued employment, management officials, supervisors, and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6), and (7).
2. National Processing Center (NPC):
  - Included: All wage grade (WG) and General Schedule (GS) employees of the DOC, Census Bureau, NPC, Jeffersonville, Indiana.
  - Excluded: All professional employees, management officials, supervisors, and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6), and (7).
3. Tucson Contact Center (TCC):
  - Included: All nonprofessional employees of the DOC, Census Bureau, TCC, Tucson, Arizona.
  - Excluded: All temporary and intermittent employees with a reasonable expectation of continued employment less than 180 days, management officials, supervisors, and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6), and (7).
4. Denver Regional Office (DNRO):
  - Included: All nonprofessional employees of the DOC, Census Bureau, DNRO, Lakewood, Colorado.
  - Excluded: All temporary and term employees, management officials, supervisors, and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6), and (7).

### Section 1.4 Change in Bargaining Unit Status

If the Agency determines that a position previously included in the bargaining unit should be excluded from the existing bargaining unit, the local Union president or designee shall be notified before the Agency takes the action. Upon receipt of the notice, the Union may meet with the Agency within five (5) working days to resolve any matter.

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## **ARTICLE 2. EFFECTIVE DATE AND DURATION**

### **Section 2.1 Effective Date**

Any agreement between the Agency and an exclusive representative shall be subject to approval by the head of the Agency.

The head of the Agency shall approve the Agreement within thirty (30) days from the date the Agreement is executed if the Agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the Agency has granted an exception to the provision).

If the head of the Agency does not approve or disapprove the Agreement within the thirty (30) day period, the Agreement shall take effect. It shall be binding on the Agency and the exclusive representative subject to the provisions of this chapter and any other applicable law, rule, or regulation.

### **Section 2.2 Renegotiation**

#### ***Section 2.2.1***

This Agreement shall remain in full force and effect for ten (10) years from the date of its signing and shall renew itself automatically each year on its anniversary date. However, either Party must give written notice to the other, no more than one hundred twenty (120) days, but not less than ninety (90) days before the expiration date of this Agreement if it desires to terminate or renegotiate this Agreement. This current Agreement will remain in effect until a new Agreement becomes effective.

#### ***Section 2.2.2***

The Parties will meet to negotiate the ground rules within sixty (60) days of the moving Party's notice to renegotiate. Proposals for ground rules for the renegotiation of the Agreement will be exchanged at that time.

### **Section 2.3 Reopener**

Either Party may propose negotiations during the term of this Agreement to reopen, amend, or modify this Agreement, but such negotiations may be conducted only by mutual consent of the Parties. Such notices to renegotiate must be accompanied by the specific provisions the Party wishes to renegotiate.

If the Parties mutually agree to commence negotiations, proposals will be limited to the Article or Section agreed to be reopened. The Parties will meet to negotiate the amendments or modifications within thirty (30) days. Such negotiations will be conducted in good faith through appropriate representatives as required by law and this Agreement.

### **Section 2.4 Amendments and Modifications**

Unless otherwise agreed by the Parties, this Agreement may only be amended, modified, or renegotiated under the provisions of this Agreement and law.

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## **ARTICLE 3. GOVERNING LAWS, REGULATIONS, AND PAST PRACTICES**

### **Section 3.1 Purpose**

This Article sets forth the effect of laws, regulations, and past practices on this Agreement.

### **Section 3.2 Laws and Government-Wide Rules and Regulations**

In the administration of this Agreement, the Parties shall be governed by all statutes and government-wide rules and regulations, as defined in 5 U.S.C. § 7100 et seq., and by subsequently prescribed government-wide rules and regulations. The Agency shall not enforce any rule or regulation (other than a rule or regulation implementing 5 U.S.C. § 2302) that is in conflict with this Collective Bargaining Agreement if the Agreement was in effect before the date the rule or regulation was prescribed, as stated in 5 U.S.C. § 7116(a)(7).

### **Section 3.3 Relationship to Agency Regulations**

Where existing provisions of Agency regulations are in conflict with this Agreement, the provisions of this Agreement shall govern unless otherwise stated in this Agreement.

### **Section 3.4 Waivers of Rights**

Each Party retains the rights accorded to it by the provisions of 5 U.S.C. § Part III, Subpart F, Chapter 71, as amended. Any waivers of the rights given to the Agency or the Union by the Federal Labor Management Relations Statute, 5 U.S.C. § Chapter 71, must be clear and unmistakably set forth in this Agreement and understood to be waived by both the Union and the Agency.

This provision does not preclude either Party from considering waiving their rights regarding future matters. However, any waiver of statutory rights must be clear and unmistakably understood to be waived by both the Union and the Agency.

### **Section 3.5 Prior Agreements and Past Practices**

1. Any prior agreement, written or oral, shall terminate upon the effective date of this Agreement except for the following:
  - A. Any existing Memoranda of Understanding (MOU) negotiated with Council 241 where the matter is not a subject of this Agreement and provided it does not conflict with this agreement; and
  - B. An MOU or other formal written Agreements signed by the Parties addressing local issues where the matter is not a subject of this Agreement and are attached as an addendum to this Agreement.
2. All past practices will end upon the effective date of this Agreement. However, should a practice continue after the effective date of this Agreement, and meet the definition of a past practice contained in this Article, it will be recognized as such, providing it does not conflict with the terms of this Agreement.
3. The Party alleging that a past practice exists bears the burden of establishing the following minimum standards:
  - A. The alleged practice was clear and applied consistently.
  - B. The alleged practice was not a special, one-time benefit or meant at the time as an exception to a general rule.
  - C. Both the Union and Agency knew the alleged practice existed, and the Agency agreed with the practice or, at least, allowed it to occur.
  - D. The alleged practice existed for a substantial period of time and it had occurred repeatedly.

The Parties agree to honor future changes by the Federal Labor Relations Authority regarding the elements required to establish a past practice.

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## ARTICLE 4. MANAGEMENT RIGHTS

1. Nothing in this Agreement shall affect the authority of any management official to exercise any of the management rights available pursuant to 5 U.S.C. 7106 as follows:
  - A. To determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and
  - B. In accordance with applicable laws:
    1. To hire, assign, direct, layoff, and retain employees in the Agency or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
    2. To assign work, to make determinations with respect to contracting out and to determine the personnel by which Agency operations shall be conducted;
    3. With respect to filling positions, to make selections for appointments from;
    4. Among properly ranked and certified candidates for promotion; or
      - A. Any other appropriate source; and
      - B. To take whatever actions may be necessary to carry out the Agency's mission during emergencies.
2. Nothing in this Agreement shall preclude the Agency and the Union from negotiating:
  - A. At the election of the Agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work; or
  - B. Procedures which management officials of the Agency 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.

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## **ARTICLE 5. EMPLOYEE RIGHTS**

### **Section 5.1 Right to Participation**

In accordance with 5 U.S.C. § 7102, each employee shall have the right to join or assist the Union, or refrain from such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under the Statute, such rights include the following:

1. The right to act for a labor organization in the capacity of a representative, and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the government, Congress, or other appropriate authorities, and
2. The right to engage in collective bargaining with respect to conditions of employment through Union representatives.

### **Section 5.2 Right to Representation**

#### ***Section 5.2.1***

Employees have a right to the representation and assistance of the Union. Employees may contact and meet privately with Union representatives during duty hours for representational matters. Employees are entitled to a reasonable amount of duty time away from the job without charge to leave to meet with these officials.

An employee must request and receive approval to use time from his/her supervisor or designee in advance. The supervisor or designee will grant time unless the absence of the employee makes completing the work area's mission impossible. In those cases, the supervisor or designee will suggest the earliest available time for the employee to leave the work area, normally within twenty-four (24) hours. Upon request, the supervisor or designee will provide the employee and/or the Union representative a written notice stating why the release was denied. A copy of this notice will be provided as soon as practicable, normally within twenty-four (24) hours. Meetings between a Union representative and an employee should take place away from the employee's office or immediate workspace.

#### ***Section 5.2.2***

The Union shall be given the opportunity to be represented at any examination (i.e., questioning) of an employee by a representative of the Agency in connection with an investigation if the employee reasonably believes that the questioning may result in disciplinary action against the employee and the employee requests representation. When a request for representation has been made, the Agency has the following choices:

1. Grant the request and delay the interview or meeting until the representative arrives and has a chance to consult privately with the employee;
2. Discontinue the meeting or interview; or
3. Allow the employee to choose whether to continue with the interview unrepresented or forgo the interview entirely.

#### ***Section 5.2.3***

The Agency will not communicate directly with employees regarding conditions of employment in a manner that will improperly bypass the Union under law.

#### ***Section 5.2.4 Surveys***

The Agency will provide the Union with at least seven (7) days advance notice of surveys concerning conditions of employment that involve employees. The Agency will provide the Union with a copy of the survey results as soon as they become available and before such results are released to employees.

Participation in surveys will be voluntary, unless the parties agree to require participation. Employees will be assured that their responses will be confidential and their anonymity protected unless the Parties agree otherwise.

The results of surveys conducted by either Party regarding conditions of employment will be shared with the other Party. If a third Party conducts a survey regarding conditions of employment and the results are distributed to the Agency, the results will be shared with the Union.

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## **Section 5.3 Access to Agency Offices and Officials**

### ***Section 5.3.1***

In resolving work-related problems, employees may choose to communicate with and seek advice from Agency offices and officials, such as the following:

1. Human Resources (HR) staff;
2. A supervisor or management official of higher rank than the employee's immediate supervisor or;
3. Equal Employment Opportunity (EEO) officials (staff members of the EEO office or an EEO counselor).

Employees are entitled to a reasonable amount of official duty time away from the job without charge to leave to meet with these officials. An employee must request and receive approval to use time from his/her supervisor or designee in advance. The supervisor or designee will grant time unless the absence of the employee makes it impossible to complete the work area's mission.

In those cases, the supervisor or designee will suggest the earliest available time for the employee to leave the work area, normally within twenty-four (24) hours. Upon request, the supervisor or designee will provide the employee with a written notice stating why the release was denied.

A copy of this notice will be provided as soon practicable, normally within twenty-four (24) hours.

### ***Section 5.3.2 Access to the Office of the Ombuds***

The Office of the Ombuds is a confidential, independent, informal, and neutral resource to help Census Bureau employees navigate workplace challenges. This office is a zero-barrier resource, so Census Bureau employees, including BUE, are not prohibited from reaching out to an ombuds to address workplace issues informally and outside of the bargaining unit process. Ombuds do not confirm or deny whether someone meets with them due to ombuds standards of practice. The Office of the Ombuds complies with universally recognized standards of practice as sanctioned by the Administrative Conference of the United States, the American Bar Association, the Coalition of Federal Ombudsman, and the International Ombuds Association. As such, Ombuds do not serve as advocates or agents of notice for the Agency. Pursuant to the Administrative Dispute Resolution Act of 1996 [5 U.S.C. § 571- 584], Ombuds shall not testify or reveal any communications written or verbal outside of ombuds proceedings. Additionally, conversation and email pertaining to Ombuds and the resolution of specific workplace concerns are confidential "dispute resolution communication" and protected from disclosure. The Union is the exclusive representative of the bargaining unit.

## **Section 5.4 Personal Rights**

### ***Section 5.4.1***

All employees shall be treated fairly and equitably in all aspects of personnel management and without regard to political affiliation, race, color, religion, national origin, gender, sexual orientation, marital status, age, disabling condition, or Union activity; and with proper regard and protection of their privacy and constitutional rights.

### ***Section 5.4.2***

Discussions between supervisors and employees that are of a private, confidential, and/or sensitive matter will be conducted in private, except in situations such as emergencies or issues of imminent danger.

### ***Section 5.4.3***

If an employee is to be served with a warrant or subpoena, it will be done in private to the extent that the Agency has knowledge and control of the situation.

### ***Section 5.4.4***

Supervisors will make a reasonable effort to introduce employees to staff in person or virtually, during the first week they report for duty.

### ***Section 5.4.5***

In accordance with existing statutes and regulations, employees have the right to present their personal views to Congress, the Executive Branch, or other authorities without of fear of penalty or reprisal.

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#### **Section 5.4.6**

1. The Agency will make reasonable efforts to provide lockable accommodations for the secure storage of appropriate personal belongings for employees.
2. Upon request, the Agency will instruct employees on filing a claim for reimbursement of personal property damage or loss and will make forms available in case of loss.
3. Any search of these accommodations must be done for good reason and in compliance with applicable laws and regulations. At least two (2) people must be present during any search, and one (1) of these will be the affected employee or a Union representative, except in extraordinary circumstances or issues outside of the Agency's control.

#### **Section 5.4.7**

Employees shall have the right to direct and fully pursue their private lives, personal welfare, and personal beliefs without interference, coercion, or discrimination at the worksite.

#### **Section 5.4.8**

An employee's decision to resign or retire, if eligible, shall be made freely and in accordance with prevailing regulations. If an employee is facing termination, the employee may resign freely and in accordance with prevailing regulations any time prior to the effective date of the termination. The employee may withdraw his or her resignation at any time prior to the effective date of the resignation as long as the position is uncommitted, unencumbered, or is not prohibited pursuant to a settlement or resolution agreement.

#### **Section 5.4.9**

A notice of retirement eligibility will be sent to employees who are within five (5) years of retirement. Upon request, the Agency will provide retirement planning information to bargaining unit employees. Such information may include, but is not limited to notice of seminars, individual counseling, elder or long-term care assistance, retirement materials, annuity comparison estimates, life and medical insurance counseling, etc.

#### **Section 5.4.10 Space for Lunch/Breaks**

The Agency will make reasonable efforts to provide bargaining unit employees with access to clean and comfortable break areas in close proximity to their work areas. These areas typically will include sinks, refrigerators, microwaves, etc. These areas should be away from customers, clients, and nonemployees whenever possible. All employees are expected to share in the responsibility of helping to keep the break room clean.

In rare cases, when it is impossible to provide onsite space for break periods, the Agency will work with the Union to identify locations where employees can spend their nonwork periods.

#### **Section 5.4.11 Space for Employee Fitness Activities**

Upon request, the Agency will make reasonable efforts to provide available space, such as conference rooms, training rooms, etc., for use by employees for exercise classes, aerobics, and other physical fitness activities. Established procedures for reserving the use of space must be followed, and the parties acknowledge that work requirements, such as meetings and training sessions, can override such requests.

This space may be made available during normal operating hours and for use by employees during their meal period or other nonduty time to the extent that these activities do not cause a disruption to the work area. Where convenient facilities exist nearby, the Union and the Agency will consider exploring a joint use program provided there is no cost incurred by the Agency.

#### **Section 5.5 Attendance at Internal Union Meetings**

Employees will be allowed to attend internal Union meetings, such as monthly membership meetings, lunch and learns, etc., while they are in a nonduty status (i.e., before or after work shifts, during breaks, meal periods, or approved leave).

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## **Section 5.6 Timely and Accurate Compensation**

### ***Section 5.6.1***

Employees are entitled to timely receipt of all compensation earned for the applicable pay period. The Agency will make every effort to ensure that employees receive their pay on the established payday and at the address or electronic site designated by the employee, in accordance with applicable laws and regulations.

### ***Section 5.6.2***

The Agency will ensure the employees' Earnings and Leave Statements are handled in a confidential manner.

### ***Section 5.6.3***

1. The Agency will ensure that employees have access to earnings and leave statements.
2. Employees are responsible for reviewing their earnings and leave statements and notifying their supervisor of any unexplained changes.
3. Upon receipt of a written request from the employee, the Agency will request a quick service payment, or equivalent, for employees who do not receive a salary payment by the scheduled payday due to an Agency administrative error.
4. The Agency agrees to assist affected employees by verifying the amount of pay that is due and to take every step to replace the missing funds.
5. In accordance with 31 U.S.C. § 3332, employees claiming hardship may request a paper check via direct mail to their homes or post office box. All others will receive their pay via electronic funds.

## **Section 5.7 Whistleblower Protection**

Employees are protected by The Whistleblower Protection Act against reprisal for the lawful disclosure of information that the employee reasonably believes is evidence of a violation of any law, rule, or regulation; or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

## **Section 5.8 Voluntary Activities**

Employees will not be required to contribute money to the Combined Federal Campaign, purchase U.S. bonds in any bond drive, or donate blood in any organized blood drive.

Participation or nonparticipation will not give an advantage or disadvantage to employees. However, this Section shall not be so construed as to prohibit the Agency from posting or circulating information concerning such charitable organizations or from otherwise encouraging employees to consider contributing to worthwhile charities or purchasing savings bonds.

## **Section 5.9 Statutory Requirements**

Personnel management will be conducted in accordance with 5 U.S.C. § 2301, Merit System Principles, and 5 U.S.C. § 2302, Prohibited Personnel Practices.



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## **ARTICLE 6. UNION RIGHTS**

### **Section 6.1 Exclusive Representation**

Pursuant to 5 U.S.C § 7114(a)(1), the Agency recognizes AFGE Council 241 (the Union) as the exclusive representative of the employees in the unit certified by the FLRA. As such, the Union is entitled to designate representatives for the purpose of collective bargaining, the filing of grievances, and such other employee-management relations activities, as are in accordance with applicable laws and regulations.

### **Section 6.2 Union Representatives**

AFGE Council 241 will notify the HQ Labor Relations Area (LRA) on a current basis of the name, title, and work location of its representatives. Local Unions will provide this information to the servicing LRA for their respective locals.

#### ***Section 6.2.1***

Union representatives will receive official time for the performance of representational duties in accordance with Article 10, Official Time.

### **Section 6.3 Union Responsibilities**

#### ***Section 6.3.1***

The Union, as the exclusive representative, is responsible for representing the interest of all employees in the unit it represents without discrimination and without regard to labor organization membership. This responsibility extends only to those matters in which the Union is the exclusive representative, specifically for the collective bargaining, grievance, and arbitration processes.

#### ***Section 6.3.2***

The Union is not required to represent or assist employees in any other matters, such as proposed adverse actions, Merit System Protection Board (MSPB) appeals, Equal Employment Opportunity complaints, Workers' Compensation claims, and other appeal procedures.

#### ***Section 6.3.3***

Union representatives, when acting in such capacity, are entitled to dignity appropriate to partners on equal footing with Agency counterparts within the context of labor-management relations.

To this end, the Parties agree that representatives of the Union and of the Agency should conduct themselves in an appropriate and respectful manner within the confines of uninhibited, robust, and wide-open debate as stipulated by the FLRA.

### **Section 6.4 National Representatives**

The Union will notify the servicing LRA normally one (1) day in advance of site visits by national representatives. National representatives of the Union who are not employees of the Agency are considered visitors and are subject to the facility's security practices, policies, and procedures applicable to all visitors.

### **Section 6.5 Agency Meetings, Conferences, and Committees**

The Union's participation in Agency meetings, conferences, and committees not otherwise covered by this Agreement will be determined by mutual agreement on a case-by-case basis. This includes determining whether Agency funds will be expended for Union representatives to attend the meeting, conference, or committee and determining the number of Union representatives that will be permitted to attend.

### **Section 6.6 Formal Discussions**

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

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2. The Union President and/or designee(s) will be given advance notice of any formal discussion that is to be held. This advance notice will include date(s), time(s), and an agenda; and will be provided no less than twenty-four (24) hours in advance of the discussion, unless management has been prevented from doing so due to an emergency.
  3. Upon request by the Union representative in attendance, they will be acknowledged by the Agency at the start of such formal discussions. The Agency representative will permit the Union representative to ask relevant questions, and to present a brief statement outlining the Union's position concerning the issues presented by management.

### **Section 6.7 Investigatory Examinations**

As provided in 5 U.S.C. §7114(a)(2)(B) and Article 5, Employee Rights, the Union has the right to be represented at any examination of an employee in the bargaining unit by a representative of the Agency in connection with an investigation if:

1. The employee reasonably believes that the examination may result in disciplinary action against the employee; and
2. The employee requests representation. The Union will determine which representative will be assigned to any particular investigatory examination. The representative will be given a reasonable amount of time to arrive at the examination. Once the employee requests representation, the Agency has the following choices:
  1. Grant the request and delay the interview or meeting until the representative arrives and has a chance to consult privately with the employee;
  2. Discontinue the meeting or interview; or
  3. Allow the employee to choose whether to continue with the interview unrepresented or forgo the interview entirely.

### **Section 6.8 Right to Information**

1. In accordance with Section 7114(b)(4) of the Federal Service Labor Management Relations Statute, the Agency, upon request and to the extent not prohibited by law, will furnish to the Union or its authorized representative data:
  - A. Which is normally maintained by the Agency in the regular course of business;
  - B. Which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and
  - C. Which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.
    1. The Union agrees to document the requests for information and provide the particularized need why the information is necessary, relevant, and how it will be used. All requests for information must be submitted to the servicing LRA.
    2. A submission of a request for information will not delay the filing or processing of a grievance.
    3. This information will be provided to the Union normally within ten (10) workdays and at no cost to the Union. If additional time or clarification is required, the Agency will notify the Union within seven (7) workdays from the date the information request was received.

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## **ARTICLE 7. DUES WITHHOLDING**

### **Section 7.1**

This Article provides for a fair and equitable system by which Union dues may be collected from employees on a timely and regular basis without having an adverse impact on the day-to-day operations of the organization.

### **Section 7.2 Union Dues**

Employees may authorize the payment of labor organization dues to the Union.

### **Section 7.3 Dues Subject to Withholding**

The term “dues” includes regular and periodic dues, fees, and assessments of the exclusive representative of the bargaining unit. The Agency shall honor the assignment and make allotments pursuant to the assignment.

### **Section 7.4 Allotments (Payroll Deductions)**

#### ***Section 7.4.1***

Employees who desire to make an allotment for payment of dues will request such allotments by voluntarily completing a Standard Form (SF) 1187 “Request for Payroll Deductions for Labor Organization Dues.” Any questions or inquiries related to dues allotment, Union membership, revocation of Union membership, or other options or alternatives for dues allotments should be directed to the appropriate local Union office.

The Union will procure the (SF) 1187 forms, make them available, and assist the bargaining unit members as needed to ensure the form is completed accurately. Information about employees electing to pay dues through the Agency will only be used in conducting official business and will not be disseminated to any individual without a need for this information.

#### ***Section 7.4.2***

Completed allotment forms will be submitted to the Union President or other authorized officer for certification completion. The Union, in turn, will promptly submit all such completed forms received from employees to the appropriate servicing payroll office for processing. If the SF-1187 is incomplete or if an employee is ineligible (i.e., nonbargaining unit employee) for payroll deduction of labor organization dues, the form will be returned to the Union with the reason(s) why the SF-1187 is being returned and/or the basis for ineligibility.

#### ***Section 7.4.3***

In most cases, a properly completed SF-1187 will be effective at the beginning of the first pay period, but no later than the second pay period, following the receipt by the appropriate servicing payroll office. The Union will contact the local servicing Labor Relations Area (LRA) to obtain the necessary assistance from the payroll official in resolving discrepancies regarding dues withholdings.

When dealing with a third Party, the Parties will make an effort to resolve matters at the lowest level possible.

#### ***Section 7.4.4***

Any allotment will be made at no cost to the Union or the employee.

#### ***Section 7.4.5***

Employees who temporarily cease dues allotment because of a temporary assignment to a position not in the bargaining unit will have their dues allotment automatically reinstated upon transfer back into a bargaining unit position without the need to fill out a new SF-1187.

### **Section 7.5 Payment and Union Dues Deduction Report**

#### ***Section 7.5.1***

The Agency will make a remittance for the amounts withheld on a biweekly basis. The remittance will be an electronic funds transfer for the balance of the dues withheld and will be made payable to the Union. The Union will provide the Agency with the appropriate local account information.

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### ***Section 7.5.2***

The servicing LRA will provide the Union with a biweekly report for dues collected by the Agency containing the following:

1. Identification of the Agency;
2. Identification of the employee's location;
3. Total amount of the remittance;
4. Name, date, and the amount deducted (including reduced or zero deductions);
5. Total number of members for whom dues are withheld; and
6. Payroll office anniversary date. A copy of the Union Dues Deduction Report will be provided to each Local Union covering only those employees in that Local.

### ***Section 7.5.3 Movement Within the Bargaining Unit***

When an employee who has dues withheld moves from one facility (office, workplace) in the bargaining unit to another, the Union will notify the appropriate servicing LRA for NPC and/or, the servicing payroll office for HQ. The employee will continue to have the payment of dues withheld. The dues amount will be adjusted based on the dues structure of the receiving local Union. After processing, the dues withheld will be remitted to the local Union that has jurisdiction for the receiving facility.

## **Section 7.6 Changes in Dues Withholding Amounts**

### ***Section 7.6.1***

The Union will notify the Agency of any changes to the amount of the regular and periodic Union dues deducted for each bargaining unit member. The Union President or other authorized Union officer shall forward a written request statement to the appropriate servicing LRA for NPC and/or the servicing Payroll Office for HQ indicating the dues change being requested.

### ***Section 7.6.2***

Such notification must be received thirty (30) workdays prior to the first day of the pay period when such change is to be effective. Changes will be effective the first pay period after timely receipt by the appropriate servicing LRA for NPC and/or the servicing payroll office for HQ.

## **Section 7.7 Dues Revocation**

### ***Section 7.7.1***

Union members who have authorized Union dues withholding may revoke their payroll deduction of dues in accordance with 5 CFR 2429 by submitting a SF-1188, "Cancellation of Payroll Deductions for Labor Organization Dues" to the local Union office.

Members wishing to revoke their payroll deduction must submit an SF-1188 or its equivalent to the appropriate local Union official. The Union will determine who will be the appropriate local Union official to handle the SF-1188. The Union will procure the forms as needed and will make them available to the Union members. The Agency will not provide SF-1188s to employees, but will direct them to the Union, as well as direct any inquiries regarding dues revocation.

### ***Section 7.7.2***

Upon receipt of the properly completed SF-1188, the Local Union President or designee must certify by date and signature or other date stamping device the date the SF-1188 is given to the Union representative. In order to be timely, the SF-1188 must be submitted to the Union during the calendar month of the initial anniversary date. The Union official will, by reference to the Union Dues Deduction Report, determine the anniversary date of the allotment. The ending date of the pay period (i.e., month, day, year) when the anniversary date appears will be documented on the SF-1188 and initialed by the Union official. The SF-1188 will be delivered to the appropriate servicing LRA for NPC and/or the servicing payroll office for HQ by the end of the pay period that the employee's anniversary date falls. Normally allotments will cease no later than the second pay period following the anniversary date provided by the Union.

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**Section 7.7.3**

Notwithstanding Section 7.7.1 of this Article, deduction of employees' dues will terminate with the start of the first payroll period after any of the following occurs:

1. Loss of exclusive recognition by the Union;
2. Separation of the employee for any reason;
3. Notice to the Agency from the Union that the employee has been suspended or expelled from the membership of the Union;
4. Transfer, reassignment, or promotion or demotion of an eligible member to a position excluded from the Union's recognition except where such assignment is temporary;
5. Activation of an employee into active-duty military status; or
6. Servicing payroll office and the LRA's receipt of a properly submitted SF-1188 from the Union.

**Section 7.8**

If the Agency removes an employee from dues withholding based on a belief that the employee's position is outside the bargaining unit, and the Federal Labor Relations Authority determines that the Agency improperly excluded the employee, the Agency will promptly reinstate the employee's dues withholding authorization and reimburse the Union for missed dues.

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## **ARTICLE 8. EMPLOYEE NOTICES**

### **Section 8.1**

Notices to bargaining unit employees concerning conditions of employment will be posted on the Agency's electronic messaging boards, physical bulletin boards where applicable, Message of the Day, Census Central, or sent via email.

A condition of employment is defined by 5 U.S.C. 7103(a)(14) means personnel policies, practices, and matters whether established by rule, regulation, or otherwise, affecting working conditions (i.e., examples include an employee's physical workspace, work schedule, leave, overtime provisions, and existing federal and Census Bureau policies, etc.).

### **Section 8.2**

Prior to the initiation of a notice to employees that impacts conditions of employment, the Agency will notify the Union in advance and allow the Union to bargain as appropriate in accordance, with Article 16, Mid-Term Bargaining.

### **Section 8.3**

Joint notices will be discussed, agreed upon, and signed by both Parties prior to release to employees.

### **Section 8.4 Representation Rights**

In accordance with 5 U.S.C. 7114(a)(3), employees will be notified of their rights to Union representation on an annual basis. The notification will be sent to all employees in January of each calendar year. The notice will contain the statutory reference and language as follows:

1. Any examination of an employee in the unit by a representative of the Agency in connection with an investigation if:
  - A. The employee reasonably believes that the examination may result in disciplinary action against the employee; and
  - B. The employee requests representation.
2. In addition, employees will be notified of the right of the Union, in accordance with 5 U.S.C. 7114(a)(2)(A), to be present at any formal discussion between one or more representatives of the Agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment.

### **Section 8.5**

During new employee in-processing, employees will be provided a notice of their representational rights and information concerning standards of conduct, including appropriate use of government equipment.

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## **ARTICLE 9. EMPLOYEE ORIENTATION**

### **Section 9.1 Goal of Employee Orientation**

An effective Orientation Program is an important component in achieving goals to establish and maintain an effective, diverse, and motivated workforce by ensuring that all employees receive information regarding their rights, benefits, roles, and responsibilities as employees of the Agency.

### **Section 9.2 Frequency of Employee Orientation**

Employee orientation sessions will be conducted on an as-needed basis. All new employees will be required to attend.

### **Section 9.3 Notification and Information**

#### ***Section 9.3.1***

The Agency will determine the length, content, and agenda of the orientation session. The Union will be included on the agenda to address new employees.

#### ***Section 9.3.2***

The Union will be notified as far in advance as possible of the scheduled dates for employee orientation. Under normal circumstances, the Union will be notified no less than five (5) days before the orientation session.

This notice will contain the date of the employee orientation session, the estimated number of new employees, and their title, grade and series, type of appointment, location, and division or branch. The Agency will provide the Union with a final list of new employees as soon as it becomes available, but no later than three (3) workdays after the orientation. The final list will include:

1. The employee's name.
2. Entry on duty date.
3. Position title, grade, and series.
4. Division or branch and location of the position.

#### ***Section 9.3.3 Employee Orientation***

An electronic link of the Collective Bargaining Agreement and instructions for access will be provided as part of the employee's orientation. Due to the Paper Reduction Act, limited copies may be available upon request to the local Union.

The Union will store the copies in their respective office and take responsibility for distribution.

- AFGE Local 1438: 270 copies.
- AFGE Local 1207: 130 copies.
- AFGE Local 2782: 20 copies.

### **Section 9.4 Union Participation**

#### ***Section 9.4.1***

The local Union officials will be introduced by the Agency representative at each orientation session.

#### ***Section 9.4.2***

The Agency agrees to grant up to two (2) local Union representatives official time for a presentation lasting no more than thirty (30) minutes at a new employee orientation to introduce himself/herself to new employees, to distribute information regarding the Union, and to answer any questions that new employees may have regarding the information received.

#### ***Section 9.4.3***

The Agency will make every effort to schedule employee orientations during a regularly scheduled workweek of Monday through Friday. In the event the work schedule of a Union representative does not permit attendance at the orientation, the Agency may alter the representative's schedule for the purpose of attending the orientation session.

If a Union representative is not available, the Agency will distribute the Union's information packet during the orientation session to new employees, at the Union's request.

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## **ARTICLE 10. OFFICIAL TIME**

### **Section 10.1 Purpose**

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

#### ***Section 10.1.1***

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

### **Section 10.2 Representational Functions**

#### ***Section 10.2.1***

Elected or appointed Union representatives may use official time for representational purposes as provided by the Statute during such time as they are otherwise in a duty status. Work schedules will not be altered so that Union officials are in duty status for the sole purpose of using official time. In unforeseen or exceptional circumstances, at the discretion of the Agency, work schedules may be altered.

#### ***Section 10.2.2***

Official time is prohibited for any activities performed by any employee relating to the internal business of the Union, including the solicitation of membership.

#### ***Section 10.2.3 Credit Hours***

In accordance with Article 42, "Work Schedules," Union representatives on a flexitime or maxiflex schedule may earn and use credit hours while on official time.

### **Section 10.3 Official List of Recognized Union Officials**

Upon execution of this Agreement, the Union will provide a list to the headquarters Labor Relations Area (LRA) identifying all bargaining unit representatives by name, location, and time earning category listed below. The Union will provide updated listings no later than September 1 of each following calendar year. When possible, any changes to this list will be submitted to the LRA one (1) week prior to the change taking effect.

This list is the official list of recognized Union officials for the use of official time under the terms of this Agreement. In the event of a substitution lasting less than three (3) days, the representative chosen for the substitution must be designated to receive official time. The Union normally will provide the LRA with forty-eight (48) hours, but no less than twenty-four (24) hours, advanced notice for all substitutions.

### **Section 10.4 Official Time Allocations**

For the purposes of this Article, the term annually refers to fiscal year.

The Agency agrees to provide official time to Union officials as follows:

#### ***Section 10.4.1 AFGC Council 241 Representatives***

A pool of two-thousand eighty (2,080) hours annually will be available for all designated representatives, as identified in Section 10.3 above.

#### ***Section 10.4.2 AFGC Local 2782***

1. President: 100 percent of tour of duty.
2. Two (2) officials: 80 percent of tour of duty.
3. Senior stewards (up to four (4) positions): Up to 20 hours per pay period each.
4. All other designated representatives: Total pool of 120 hours per pay period.



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Unused official time may not be accumulated or borrowed. Section 10.4.2 hours will be available for all designated representatives for AFGE Local 2782, as identified in Section 10.3 above.

***Section 10.4.3 AFGE Local 1438 (Includes the Denver Regional Office Clerical and Administrative Staff)***

1. Local President or designee: 100 percent of their tour of duty.
2. Two (2) Officials: 50 percent of tour of duty.
3. All other designated representatives: Up to 20 hours per pay period each with a combined total limit of 200 hours per pay period.

Unused official time may not be accumulated or borrowed. Section 10.4.3 hours will be available for all designated representatives for AFGE Local 1438, as identified in Section 10.3 above.

In the event of unforeseen circumstances, (i.e., vacancies, extended leave, etc.) the Local President or designee may change these designations. The Union must provide the LRA with notice of such changes.

During the decennial census cycle where there is a significant increase in staffing levels, the Parties may reopen the provisions of Section 10.4.3 specifically regarding the hours for designated Union representatives.

***Section 10.4.4 AFGE Local 1207***

All designated representatives: Total pool of 1300 hours annually.

Unused official time may not be accumulated or borrowed. Section 10.4.4 hours will be available for all designated representatives for AFGE Local 1207, as identified in Section 10.3 above.

**Section 10.5 Activities Covered Under Official Time Hours**

Official time will be granted for the following purposes:

1. To consult with employee(s), supervisor(s), or management regarding a case and/or potential case;
2. To meet, prepare, and respond to a proposed disciplinary/adverse action;
3. To submit grievances to the Agency, in accordance with this Agreement;
4. To prepare for any employee, Union, or management grievance at the arbitration stage;
5. To attend any Union invoked arbitration hearing;
6. To investigate, prepare, and meet with the Agency on any Unfair Labor Practice (ULP) filed by the Union pursuant to 5 U.S.C. 7116 and Article 15, Unfair Labor Practices;
7. To investigate and prepare a petition for unit clarification under 5 U.S.C. Chapter 71;
8. To prepare for a hearing before the FLRA or MSPB;
9. To attend Weingarten meetings, if requested by the employee, as defined in 5 U.S.C. 7114(2)(8) and in Article 5, Employee Rights and Article 6, Union Rights;
10. To prepare financial and other reports which must be made available to the public as required by Section 7120 of the Federal Service Labor-Management Relations Statute; and
11. To communicate with Congress in their capacity as Union representatives, regarding matters concerning bargaining unit working conditions, except where prohibited by the federal statute.

This list is not intended to be all-inclusive, but instead is intended to provide examples of situations where official time may be authorized. Official time should be authorized in any situation that is in accordance with federal law and regulation.

**Section 10.6 Exceptions**

The following activities are excluded from the official time allocation and use specified in Section 10.5 of this Article. The Agency will authorize a reasonable amount of official time to those officials recognized under Section 10.3 for labor management activities authorized under 5 U.S.C. 71, as follows:

1. To spend time in term agreement negotiations;
2. To spend time in mid-term negotiations;

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3. To investigate and respond to a management-filed grievance under Article 12, Negotiated Grievance Procedure;
  4. To attend hearings such as at arbitration, the Federal Service Impasses Panel (FSIP), MSPB, and FLRA hearings;
  5. To investigate and meet with the Agency on any ULP filed by the Agency pursuant to 5 U.S.C. 7116 and Article 15, Unfair Labor Practices (ULP);
  6. To attend formal meetings as defined in 5 U.S.C. 7114(2)(A) and in Article 5, Employee Rights and Article 6, Union Rights;
  7. To attend labor-management meetings, subject to Article 17, Labor Management Relations (LMR) Meetings, Article 18, Joint Labor-Management Training, and Article 19, Labor-Management Council;
  8. To attend Management and Union joint committees or workgroups; and
  9. To prepare for an impasse proceeding.

## **Section 10.7 Arranging for Official Time Use**

### ***Section 10.7.1***

Union representatives will be permitted to leave their assigned work area on official time as authorized under this Agreement only after receiving approval from their immediate supervisor or designee and identifying the specific representational activity being performed under Section 10.5 or 10.6.

Release to perform representational duties should normally be provided unless absence from the worksite would cause an adverse impact to the mission of the Agency. Delays in release should be of short duration, under two (2) hours, but normally not more than twenty-four (24) hours. The Union representative will be given reasonable time solely to inform any bargaining unit employees, and/or management representative, involved in the delay.

If a Union official is requesting a substitution of another Union official to act on their behalf, they should advise their servicing LRA for official time reporting. It is incumbent upon the substituting Union official to request their official time use in advance with their supervisors in accordance with Section 10.7, "Arranging for Official Time Use."

### ***Section 10.7.2***

On occasion, discussions between the Union representative and the employee may take longer than originally anticipated. In these cases, each must notify and obtain approval from his/her respective supervisor or designee of the need to extend the anticipated return time.

### ***Section 10.7.3***

Consistent with Section 10.7.1 of this Article, supervisors may require that Union officials return to the work site if a work need arises or if the Union official failed to complete a work assignment that was a precondition for the approval of official time. Following the completion of the necessary work assignment, Union officials will be permitted to return to official time status, or have the time rescheduled for another day/time.

### ***Section 10.7.4***

Union officials who have a need to enter a work area in the exercise of legitimate representational duties under this Agreement must request and receive permission from the supervisor of that work area in advance.

### ***Section 10.7.5***

The Agency agrees to provide a report of representational official time to AFGE Council 241 and each respective Local once accurate information has been entered into the official timekeeping system, on a pay period basis.

## **Section 10.8 Training**

Training hours will be allocated per fiscal year as follows:

- AFGE Council 241: Union representatives will be granted a pool of up to two hundred (200) hours to be shared for the purpose of attending labor relations training or other training related to employees' working conditions.
- AFGE Local 2782: Union representatives will be granted a pool of up to six hundred (600) hours to be shared for the purpose of attending labor relations training or other training related to employees' working conditions. The Local President will be excluded from the total pool of training hours.

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- AFGE Local 1438: Union representatives will be granted a pool of up to six hundred (600) hours for the purpose of attending labor relations training or other training related to employees' working conditions. The Local President will be excluded from the total pool of training hours. The Denver Regional Office Bargaining Unit is represented by AFGE Local 1438.
  - AFGE Local 1207: Union representatives will be granted a pool of up to two hundred fifty (250) hours for the purpose of attending labor relations training or other training related to employees' working conditions.

#### ***Section 10.8.1 Training Requests***

Written requests, including an agenda, list of attendees, the number of official training time hours requested per attendee, and the work schedule of each attendee, will be forwarded normally no later than ten (10) workdays in advance of the training to the servicing LRA. The Agency will respond to the request no later than five (5) workdays from the date it is received.

#### **Section 10.9 Term Contract Training**

The Parties may jointly provide Term Contract training to employees within six (6) months of this Agreement. The cost of the training will be paid by the Agency, budget permitting. The Parties will prepare training material and attend training jointly; however, this does not preclude additional training by either Party.

#### **Section 10.10 Limitations Concerning the Use of Official Time**

1. Union representatives will not be authorized to earn overtime or compensatory time off for their performance of Union representational duties.
2. Credit hours earned while performing official time activities must be requested and approved in advance by the Union official's supervisor. The credit hours must be for covered activity under Article 10, Section 10.5, and Section 10.6. Examples of when credit hours cannot be earned are when the period is in excess of an employee's basic work requirement, Union-initiated meetings and training sessions that run past the end of their daily work schedule, or if a Union official stays past the end of their shift to perform Union administrative and/or internal business.
3. The Agency, at its sole and exclusive discretion, may approve official time for travel associated with Union requests for training. An Agency decision under this Section may not be disputed, grieved, or otherwise contested in any forum or appeal process.

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## **ARTICLE 11. UNION FACILITIES AND SERVICES**

### **Section 11.1 Office Space, Furnishings, and Equipment**

1. The Agency will continue to provide the local Unions at headquarters (HQ), Jeffersonville, Tucson, and Denver standard-issued office space, equipment, and furnishings. Individually assigned standard-issued equipment will be utilized from the perspective of being both a Union official and a Census Bureau employee.
2. The Agency will provide the Union at HQ with a screen monitor to be placed in the Union's conference space. Union officials are responsible for any and all assigned equipment. For accountable property, Union officials must follow Agency procedures for assignment. Any additional requests for equipment and supplies above these standards will be the Union's responsibility.
3. Should there be a need for additional office space and/or equipment, or a reduction of office space and/or equipment, the Parties agree to reassess the provisions delineated in Section 11.1 of this Article as needed. If a new location is determined, the Agency will notify the Union on the Union's office space in accordance with Article 16 Mid-Term Bargaining.

#### ***Section 11.1.1 Other Facilities, Services, and Supplies***

Any requests by the Union for additional facilities, services, and supplies not provided for elsewhere in the Agreement shall be made in writing to the servicing Labor Relations Area (LRA). The Agency may grant the request subject to the following:

1. Availability of the requested facilities, services, or supplies;
2. The Union demonstrating need; and
3. Payment by the Union of any costs over and above the Agency's normal/usual operating expenses.

If payment will be required by the Union, the Agency will give the Union an actual or estimated cost associated with the items requested under this Article prior to the item or service being provided.

### **Section 11.2 Union Meetings**

The Union will be given access to available, unreserved conference rooms, training rooms, and auditoriums for meetings that will accommodate appropriate size and space needs. The Union will submit all requests for reservations to the servicing LRA thirty (30) days in advance. This timeframe will be waived for representational matters where official time is authorized.

If such space is not already committed, facilities shall be made available for Union meetings and membership drives before or after duty hours, during meal periods, or during duty hours when the present Union official(s) and other present bargaining unit employees are in a leave or nonduty status.

The Union reserves the right to change the date and time of the meeting pending room availability. The meeting times are to be determined by each location.

Union information will be posted in the Message of the Day (MOD) system, on electronic bulletin/message boards, physical bulletin boards, or on the broadcast system upon content review/approval by the Agency. Normally, no more than two (2) postings per month will be permitted in any given system.

#### ***Section 11.2.1 Headquarters***

Union meetings will be held the third Thursday of each month. The Agency agrees to provide meeting space when available. The Agency will also provide the Union access to virtual platforms for meetings.

#### ***Section 11.2.2 Jeffersonville***

The Agency agrees to furnish the Union space to conduct regular membership meetings on the fourth Wednesday of each month when available. The Agency will also provide the Union access to virtual platforms for meetings.

#### ***Section 11.2.3 Tucson Contact Center***

Union meetings will be held the third Thursday of each month. The Agency agrees to provide meeting space if it is available, and the facility is open. The Agency will also provide the Union access to virtual platforms for meetings.

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### **Section 11.3 Union Access**

The designated Union official is required to comply with the security protocols to access the facility.

### **Section 11.4 Bulletin Boards/Intranet Postings**

The Agency agrees to continue to allow the Union to utilize intranet postings and the current physical bulletin boards. The Parties agree that the Union may review and/or request repositioning of boards, based upon the location of bargaining unit employees, on an annual basis. The Union agrees to be responsible for the propriety of materials posted on the intranet or bulletin boards. The Union agrees that material posted will not violate any laws, applicable regulations, provisions of this Agreement, the security of the Agency, or contain libelous or derogatory information.

### **Section 11.5 Communications**

1. The Union may communicate with Agency officials, employees, neutral third parties, or members of the public via the Agency's electronic mail system or communication platforms. The Union will comply with all federal mandates, regulations and Department or Agency policies.
2. The Union will utilize the most current Agency approved secure methods for sending data when communications contain Personally Identifiable Information (PII) or other sensitive information, via the Agency's secure file encryption software and/or by password protection via the Agency's electronic mail system.
3. The Union will have access to the Census Bureau staff roster and email addresses for all employees.
4. Electronic mail transmissions shall be consistent with 18 U.S.C. § 1913, and not used to influence or promote lobbying activities either in support of or in opposition to any legislation, law, ratification, policy, or appropriation.

### **Section 11.6 Distribution of Literature**

The Union agrees that all mass distribution of materials, including but not limited to announcements and flyers, will be accomplished electronically rather than through interoffice mail where available. Official publications of the Union that may include newsletters, fliers, or other notices may be distributed by Union representatives during nonduty time. Union representatives may use centralized mail slots/drops, email or intranet to distribute Union publications.

The Agency agrees to allow the Union to continue reasonable use of the interoffice mail system. The Union agrees to comply with all policies on data stewardship to ensure that PII is appropriately protected.

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## **ARTICLE 12. NEGOTIATED GRIEVANCE PROCEDURE**

### **Section 12.1 Purpose**

The purpose of this Article is to provide a mutually acceptable method for the processing of grievances filed by employee(s), the Union, or the Agency.

The Parties agree that grievances should be settled in an orderly, prompt, and equitable manner so that the efficiency of the Agency may be maintained, and morale of employees shall not be impaired. Reasonable effort shall be made by the Parties to resolve grievances at the lowest possible level.

### **Section 12.2 Coverage and Scope**

A grievance means any complaint:

1. By an employee(s) concerning any matter relating to the employment of the employee;
2. By the Union concerning any matter relating to the employment of any employee; or
3. By any employee(s), the Union, or the Agency concerning:
  - A. The effect or interpretation, or a claim of breach, of a collective bargaining agreement; or
  - B. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

### **Section 12.3 Exclusions**

#### ***Section 12.3.1***

Grievances on the following matters are excluded from the scope of this procedure:

1. Any claimed violation of subchapter III of chapter 73 of Title 5 U.S.C. relating to prohibited political activities;
2. Retirement, life insurance, or health insurance;
3. A suspension or removal under 5 U.S.C. § 7532 relating to national security;
4. Any examination, certification, or appointment;
5. The classification of any position that does not result in the reduction in grade or pay of an employee.

#### ***Section 12.3.2***

The Parties agree that unless there is a violation of regulation, law, or specific portions of this Agreement, the following will be exempted from the grievance procedure:

1. The termination of an employee, who does not meet the definition of an employee under 5 U.S.C. § 7511(a)(I), during a probationary period, trial period, or temporary appointment, as applicable.
2. The decision to adopt or not to adopt a suggestion.
3. Counseling of an employee that relates to conduct and/or performance.
4. The Parties agree that the criteria used for determining award recipients are negotiable. However, the decision to grant or not to grant an award to an individual or group of employees is not subject to this grievance procedure unless there is a misapplication of the criteria.
5. A notice of a proposed administrative action.
6. Contents of the performance plan within the electronic Performance Management Record (CD-430). For a performance rating issue refer to Article 33, Performance Management System.

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## **Section 12.4 Exclusivity**

### ***Section 12.4.1***

Grievances may be initiated by an employee covered by this Agreement and/or their Union representative or by the Agency. Representation of employees shall be the sole and exclusive province of the Union.

### ***Section 12.4.2***

As provided for in 5 U.S.C. § 7121, the following actions may be filed under either the statutory procedure or the negotiated grievance procedure, but not both:

1. Discrimination because of race, color, religion, sex, national origin, age, handicapping condition, or marital status or political affiliation pursuant to 5 U.S.C. § 2302(b)(1);
2. Allegations of prohibited personnel practices; pursuant to 5 U.S.C. § 2302(b)(2 thru 12);
3. Removal or reduction in grade based on unacceptable performance pursuant to 5 U.S.C. § 4303; and
4. Adverse actions (i.e., removal, suspension for more than 14 days, reduction in grade, reduction in pay, and furlough of thirty (30) days or less) pursuant to 5 U.S.C. § 7512.

Employees have the option to use either this negotiated procedure or a statutory appeals procedure, but not both, for (1) employment discrimination complaints, and (2) final decisions on furloughs for 30 days or less. Employees exercise their option when they file a timely notice of appeal under the appropriate appellate procedure or file a timely grievance in writing under this procedure. In employment discrimination complaint actions, this election is made in accordance with Agency policy and Equal Employment Opportunity regulations.

The employee will be deemed to have exercised their option when the employee timely files an appeal under the applicable appellate procedure (EEO, MSPB) or timely files a grievance in accordance with the provisions of this Article, whichever event occurs first.

Selection of the negotiated grievance procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board (MSPB) or the Equal Employment Opportunity Commission (EEOC) to review a final decision of discrimination as provided in 5 U.S.C. § 7121.

## **Section 12.5 Representation**

### ***Section 12.5.1***

Upon filing of a grievance, an employee may elect to be self-represented or represented by a Union representative.

If the employee chooses to be represented by the Union, the employee will notify the Agency in writing of the name of the representative that was assigned to him/her by the Union and the effective date of the designation. This designation will remain in effect throughout the processing of the grievance unless the employee or the Union otherwise revokes it in writing.

In presenting a grievance, an employee electing to be self-represented is bound by and may avail himself/herself of all provisions of this Article, except the employee may not invoke arbitration over any issue.

### ***Section 12.5.2***

The Union has the right to be present during any proceeding under the negotiated grievance procedure. If the Union is not the designated representative, a copy of the grievance will be provided to the Union within five (5) business days of the filing date. The Agency will provide the Union reasonable advance notice of any grievance meeting/discussion that is considered formal in nature under the Statute when the Union is not the designated representative. A copy of each grievance decision will be provided to the Union in a timely manner.

### ***Section 12.5.3***

When the employee elects Union representation, all meetings and communication regarding the grievance and any attempts at resolution shall be conducted through the designated Union representative.

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#### **Section 12.5.4**

When the grievant and the representative are on the same shift, reasonable efforts will be made to ensure grievance meetings are scheduled during that shift.

#### **Section 12.5.5**

In situations where the grievant and representative are on different work schedules and/or locations, the Parties will make a reasonable effort to schedule grievance meetings during the common work times of the grievant and representative. However, this shall not be interpreted as meaning the Agency is obligated to change the grievant and/or the representative's work schedule.

### **Section 12.6 Employee and Union Representative Protections**

Employees and their representatives will be unimpeded and free from restraint, interference, coercion, discrimination, or reprisal, consistent with 5 U.S.C. Chapter 71 and this Agreement. With supervisory approval, employees shall be authorized a reasonable amount of duty time, if already in a duty status, to prepare and present a grievance.

### **Section 12.7 Grievability/Arbitrability Questions**

In the event either Party should declare a grievance nongrievable or nonarbitrable, the original grievance shall be considered amended to include this issue. The Parties agree to raise any questions of grievability or arbitrability of a grievance within the time limit for the written answer in the final step of this procedure. All disputes of grievability/arbitrability shall be presented along with the merit(s) and/or issue(s) in the related grievance.

### **Section 12.8 Time Limits**

#### **Section 12.8.1**

A grievance concerning a particular act or occurrence must be presented to the servicing Labor Relations Area (LRA) within twenty-one (21) calendar days of the act, or occurrence, or date the employee, Union, or Agency became aware of it or should have become aware of it.

#### **Section 12.8.2**

All the time limits in this Article may be extended by mutual consent.

#### **Section 12.8.3**

A grievance remanded on grounds that the matter is not timely under this Agreement shall be considered rejected and constitute a statement by the remanding Party that the grievance is neither grievable nor arbitrable. However, if the grieving Party does not accept the reason for untimeliness, the grieving Party will have seven (7) business days to resubmit the grievance and pursue it through the remaining steps of the grievance procedure established by this Agreement, as to both the rejection of the grievance and the merits of the grievance. In the event the grievance is not resolved, the procedure established in Article 13, Arbitration, shall apply.

#### **Section 12.8.4**

Proof of service shall be a return post office receipt and/or electronic confirmation executed by the person served; or a written acknowledgment from the person served when hand delivered.

### **Section 12.9 Grievance Meetings**

Unless otherwise agreed to in advance by the Parties, grievance meetings normally will be limited to the grievant, a properly designated Union representative, and representative(s) by the Agency. For training and/or developmental purposes, when agreed to in advance by the Parties, an additional Union and/or Agency representative will only be permitted to observe at the grievance meeting.

The grievance meetings will normally occur within ten (10) business days of the referral from the servicing LRA or the HQ LRA.



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## **Section 12.10 Procedures for Employee Grievances**

The Parties recognize that most grievances arise from misunderstandings or disputes that can be resolved promptly and satisfactorily on an informal basis. The Parties should make a reasonable effort to resolve the issue by discussing it informally prior to committing the grievance to writing. In addition, a deciding official may seek additional relevant information pertaining to the grievance from all available sources.

### ***Section 12.10.1***

Grievances normally will begin at Step (1), except for the following:

1. An employee grieving an adverse action consisting of a removal, suspension for more than fourteen (14) days, reduction in grade or pay, furlough for thirty (30) days or less, and any personnel actions resulting from a Reduction in Force (RIF) must begin at Step (3) of the grievance procedure.
2. An employee grieving a suspension of fourteen (14) days or less normally must begin at Step (2) of the grievance procedure; however, exceptions may occur that require the grievance to begin at Step (3).

### ***Section 12.10.2 Step (1)***

The Step (1) grievance must generally be submitted electronically on a completed grievance form, (Addendum A) BC-1575 (T), to the servicing LRA with the available supporting documentation.

The servicing LRA will refer the grievance normally within five (5) business days to the appropriate deciding official, normally the lowest level supervisor who has authority over the matter and can grant relief. Normally, within five (5) business days after receipt of the grievance, the Step (1) deciding official will contact the servicing LRA who will then contact the Union representative and/or the employee (if self-represented) to schedule a grievance meeting.

The grievance meeting will be scheduled in accordance with Section 12.9 of this Article. The representative and/or employee should normally respond within three (3) days to the grievance meeting request and advise LRA if they are unable to attend the meeting and need to reschedule. The Step (1) deciding official will issue a decision in writing within ten (10) business days after the meeting.

### ***Section 12.10.3 Step (2)***

If Step (1) does not result in a mutually acceptable resolution, the grievant and/or his/her representative may proceed to Step (2) by electronically filing the completed grievance form, BC- 1575 (T) (i.e., generally the same issue(s) and relief from Step (1) ) and the available supporting documentation, as provided in Step (1), along with a copy of the decision from Step (1) to the servicing LRA within ten (10) business days of the receipt of the decision at Step (1).

The servicing LRA will refer the grievance including all supporting documentation/evidence normally within five (5) business days to the appropriate deciding official, normally the Division Chief/Office Chief level who has authority to grant relief. Normally, within five (5) business days after receipt of the grievance, the Step (2) deciding official will contact the HQ LRA who will contact the Union representative and/or the employee (if self-represented) to schedule a grievance meeting.

The grievance meeting will be scheduled in accordance with Section 12.9 of this Article. The representative and/or employee should normally respond within three (3) days to the grievance meeting request and advise LRA if they are unable to attend the meeting and need to reschedule. The Step (2) deciding official will issue a decision in writing within ten (10) business days after the meeting.

### ***Section 12.10.4 Step (3)***

If Step (2) does not result in a mutually acceptable resolution, the grievant and/or his/her representative may proceed to Step (3) by filing the fully completed grievance form, BC-1575 (T) (i.e., generally the same issue(s) and relief from Step (2)) and the available supporting documentation, along with a copy of the decision from Step (2) to the HQ LRA within ten (10) business days of the receipt of the decision at Step (2).

The HQ LRA will refer the grievance including all supporting documentation/evidence provided normally within five (5) business days to the appropriate deciding official, normally above the Division/Office Chief or an equivalent level. Normally, within five (5) business days after receipt of the grievance, the Step (3) deciding official will contact the HQ LRA who will contact the Union representative and/or the employee (if self-represented) to schedule a grievance

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meeting. The grievance meeting will be scheduled in accordance with the Section 12.9 of this Article. The representative and/or employee should normally respond within three (3) days to the grievance meeting request and advise LRA if they are unable to attend the meeting and need to reschedule. The deciding official will issue a decision in writing within fifteen (15) business days after the meeting.

#### **Section 12.10.5 Step (4)**

If the grievance is not satisfactorily resolved in Step (3), the grievance (i.e., generally the same issue(s) and relief from Step (3)) may be referred to arbitration as provided in Article 13, Arbitration. Only the Union can refer an employee grievance to arbitration.

#### **Section 12.11 Union Filed Grievances**

Union based grievances will normally begin at Step (2) of the grievance procedure; however, exceptions may occur that require it to be filed at Step (3).

For Union filed grievances over contract provisions, the servicing LRA will refer the grievance to the appropriate lowest level deciding official with authority to grant the relief sought. The grievance meeting will be scheduled by the servicing LRA in accordance with the Section 12.9 of this Article which is normally ten (10) business days. The deciding official will issue a decision in writing within fifteen (15) business days after the meeting.

If the grievance is not satisfactorily resolved at the Step (3) level, the grievance (i.e., generally the same issue(s) and relief) may be referred to arbitration as provided in Article 13, Arbitration. Only the Union can refer the grievance to arbitration.

#### **Section 12.12 Agency Filed Grievances**

Agency based grievances will normally begin at Step (2) of the grievance procedure; however, exceptions may occur that require it to be filed at Step (3).

For Agency filed grievances, the HQ LRA will refer the grievance to the respective Local President, or Council 241 Union President, as appropriate. Normally, within five (5) business days after receipt of the grievance, the Local President or Council 241 Union President, as appropriate, will contact the HQ LRA or designee to schedule the grievance meeting. The grievance meeting will be scheduled in accordance with Section 12.9 of this Article which is normally ten (10) business days. The Local President or Council 241 Union President, as appropriate, will issue a decision in writing within fifteen (15) business days after the meeting.

If the grievance is not satisfactorily resolved at the Council level, the grievance (i.e., the same issue(s) and relief) may be referred to arbitration as provided in Article 13, Arbitration. Only the Agency can refer the grievance to arbitration.

#### **Section 12.13 Improperly Filed Grievances**

If a grievance has been improperly filed under this Article, it shall be remanded to the grievant/representative with a specific statement as to the deficiencies. The grievant/representative shall then have seven (7) additional business days to file the grievance properly. Should the grievant/representative fail to remedy the deficiencies within the seven (7) business days, and absent any further extension of the time limit, the grievance shall be nullified.

#### **Section 12.14 Grievance Decisions**

All grievance decisions will be in writing and state the issue being grieved, a summary of the findings, and the rationale for the decision. Upon written request, copies of relevant documents cited in the decision will be provided if they are not otherwise readily available to the grievant or representative.

#### **Section 12.15 Multiple Grievances**

Multiple grievances over the same issue may be initiated as either a group grievance or as a single grievance at any time. At any stage of the grievance procedure, grievances may be combined and decided as a single grievance by mutual consent of the Parties.

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**Section 12.16 Nullification**

When an employee dies, resigns, or is otherwise separated from the Agency before a decision is reached on his or her grievance, the grievance shall be nullified unless the issue involves a question of back pay.

**Section 12.17 Failure to Meet Time Requirements**

Failure of the deciding official to render a decision within the time limits in this Article shall permit the grievant(s) to advance to the next step.

**Section 12.18 Withdrawal**

The Union, acting as the responsible representative of an employee, may withdraw a grievance without advanced notice or reason by presenting notice in writing to the servicing LRA at any step of the grievance procedure. An employee, acting as his/her own representative, may withdraw a grievance at any step of the grievance process without advanced notice or reason by presenting notice in writing to the servicing LRA. The Agency may withdraw a grievance at any step of the grievance process without advanced notice or reason by presenting notice in writing to the Union.

**Section 12.19 Outstanding Grievances**

The Parties agree that any outstanding grievances initiated before the effective date of this Agreement will be processed under the terms of the Agreement in place at the time the grievance was filed. "Initiated" means that the grievant/representative timely filed the grievance at the appropriate step of the process under the prior Agreement.

If the event giving rise to a grievance occurs before the effective date of this Agreement, but the grievant/representative timely files the grievance after the effective date of this Agreement, the terms and conditions of this Agreement will control the grievance.

This Section should not be interpreted as an extension/waiver of the time limits for filing under either Agreement.

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## **ARTICLE 13. ARBITRATION**

### **Section 13.1 General**

This Article shall be administered in accordance with the Federal Service Labor-Management Relations Statute, Title 5, U.S.C. Chapter 71. This Article establishes the procedures for the arbitration of disputes between the Union and Agency that are not satisfactorily resolved by the negotiated grievance procedure found in Article 12 of this Agreement.

Arbitration may be invoked only by the Union or the Agency. The Union will provide the Agency with a designation of Union officials with the authority to invoke arbitration.

### **Section 13.2 Preliminary Procedures**

Arbitration must be invoked within thirty (30) days of the receipt date of the final grievance decision and submitted in writing to the servicing Labor Relations Area (LRA). The notice to invoke shall identify the grievance and shall be signed and dated by an authorized representative on behalf of the Party submitting the matter to arbitration. If the arbitration invocation is withdrawn or the invocation deadline is not met, absent an approved extension by the noninvoking Party, the last written grievance decision will be considered final.

### **Section 13.3 Selecting an Arbitrator**

The servicing LRA will submit an electronic request with a copy to the Union President or designee, for a list of seven (7) qualified arbitrators to the Federal Mediation and Conciliation Service (FMCS), Office of Administrative Services. The request must be submitted no later than five (5) business days from the date arbitration was invoked.

Within ten (10) days after receipt of the list of arbitrators, the Parties will meet for the purpose of selecting an arbitrator from the list. Selection will be accomplished by the Parties alternately striking names from the list until one individual remains. This individual shall serve as arbitrator.

The right of "first strike" will alternate between the Parties with a coin flip determining the first right of "first strike." Each arbitration is independent of the other. A new panel of arbitrators will be obtained for each grievance that arbitration has been invoked.

At any time, the Parties may obtain a new list of arbitrators from the FMCS by mutual consent. Upon request of the grieving Party (i.e., the Agency or the Union) the FMCS shall be empowered to make a direct designation of an arbitrator to hear the case in the event (1) either Party refuses to participate in the selection of an arbitrator, or (2) upon inaction or undue delay on the part of either Party.

### **Section 13.4 Scheduling Arbitration**

Upon selection of the arbitrator, the Parties shall jointly communicate with the arbitrator and one another within fifteen (15) calendar days to select an agreeable date for the submission of motions and responses dealing with questions of arbitrability, if any, and request a list of possible dates for the hearing. The hearing may be conducted virtually or in person.

Arbitration hearings over employee grievances concerning an employee separation shall take place at the site where the employee works, or worked, unless otherwise mutually agreed to. Individuals will be escorted according to security procedures.

An arbitration must be scheduled (not held) within ninety (90) days of the selection. Timeframes may be extended by mutual agreement.

### **Section 13.5 Expedited Arbitration**

#### ***Section 13.5.1***

Expedited arbitration must be mutually agreed upon on a case-by-case basis in writing; where the arbitrator appointment, hearings, and awards are acted upon quickly by the Parties, FMCS, and the arbitrator.

#### ***Section 13.5.2***

The following rules apply to the conduct of the expedited arbitration hearing:

1. Arbitration must be invoked within five (5) days of the receipt date of the final grievance;

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2. The selection/contacting of the arbitrator (striking method in Section 13.3) must be made within thirty (30) days from receipt of the Step (3) grievance decision;
  3. Both Parties must attempt to schedule a hearing within ten (10) business days of the receipt of the arbitrator schedule of availability;
  4. Subject to the availability of the arbitrator, the Parties will attempt to have the hearing within thirty (30) calendar days of selecting the arbitrator;
  5. The rules of evidence will be relaxed;
  6. Normally, briefs will not be filed either before or after the hearing; and a transcript will not be made unless mutually agreed to by the Parties or required by the arbitrator;
  7. Both Parties will be encouraged to use stipulations of fact and expected testimony for uncontroverted evidence;
  8. Both Parties may present closing statements orally at the conclusion of the hearing. If the Parties mutually conclude at the hearing that the issues are of such complexity or significance as to warrant further consideration, the hearing procedures may be appropriately modified, or the hearing may be canceled and the matter referred to regular arbitration; and
  9. The arbitrator will issue an award either from the bench at the conclusion of the hearing, which will be confirmed in writing within two (2) days; or in writing within two (2) days after the conclusion of the hearing.

### **Section 13.6 Issues of Grievability/Arbitrability**

The arbitrator has the authority to make all grievability and/or arbitrability determinations. If either Party raises an issue of grievability/arbitrability and the arbitrator is unable to determine arbitrability, he/she will hear the merits of the underlying grievance and decide both issues together.

Upon mutual agreement of the Parties, issues arising under this Section may be submitted to the arbitrator and decided prior to hearing the merits of the underlying grievance. There will be no separate hearing for grievability/arbitrability issues except by mutual consent.

### **Section 13.7 Prehearing Matters**

The Parties shall communicate twenty (20) days in advance of the arbitration hearing in an attempt to agree on a joint submission of the issue(s) for arbitration. If the Parties fail to agree on a joint submission, each Party will prepare a separate statement of the issue(s) for presentation to the arbitrator five (5) business days prior to the arbitration hearing. The arbitrator will have the final authority to determine the issue(s) to be decided.

The Parties will exchange lists of witnesses ten (10) days in advance of the hearing and indicate the nature of the testimony to be provided by each (e.g., direct observation of an incident, knowledge of bargaining history, or special expertise for each witness). Disputes regarding the relevance of a witness or redundant testimony will be resolved by the arbitrator.

The grievant(s) and employees who are called as witnesses and/or technical advisors will be excused from the performance of their normal duties to the extent necessary to participate in the arbitration proceedings and during such times, these employees shall continue in a pay status.

The Union shall have full authority to settle, withdraw, or otherwise dispose of any grievance brought on behalf of the Union and/or on behalf of employees. Any decision by the Union to settle, withdraw, or otherwise dispose of a grievance appealed to arbitration shall be binding upon the grievant(s).

The Agency and the Union may have an equal number of representatives at an arbitration hearing. The Union is obligated to notify the Agency in writing, no less than ten (10) days prior to the hearing, with the name(s) of the Agency employee(s) to be on duty time, as well as any representative(s) not on official time.

### **Section 13.8 Authority of Arbitrator**

The arbitrator's decisions shall be final and binding subject to the Parties' right to take exceptions to an award, in accordance with law; or the grievant's right, if applicable, to initiate court action. However, the arbitrator shall be bound by the terms of this Agreement and shall have no authority to add to, subtract from, alter, amend, or modify any provision of this Agreement. The arbitrator may retain jurisdiction over a case, when necessary, to clarify the award; and will retain

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jurisdiction in all cases where exceptions are taken to an award and the Federal Labor Relations Authority (FLRA) regulation remands the arbitration for further consideration.

The jurisdiction and authority of the arbitrator shall be confined to the matter(s) presented through the Step (3) grievance unless otherwise mutually agreed to by the Parties.

### **Section 13.9 Ex Parte Communication With Arbitrator**

Outside of administrative and technological matters (i.e. assistance with virtual platforms, instructions for accessing the facility, and safety and security concerns), there will be no communication with the arbitrator unless both Parties are participating in the communication.

### **Section 13.10 Arbitrator's Award**

The arbitrator shall render a written decision no later than thirty (30) days after the submission of post-hearing briefs or the conclusion of the hearing, whichever is later, unless the Parties mutually agree to extend this time limit. If no exception or other appropriate legal action is filed within the time limit established by statute and/or FLRA, the award is final and binding. The appropriate Party will take the actions required by the final award within thirty-one (31) days after it becomes final and binding, except as provided by the Award. This Section does not apply to the expedited arbitration procedure contained at Section 13.5.

### **Section 13.11 Costs of Arbitration**

#### ***Section 13.11.1***

Costs of regular fees, including reasonable travel expenses of the arbitrator selected to hear the case, will be borne by the nonprevailing Party. It is the responsibility of the arbitrator to designate one and only one nonprevailing Party.

However, the arbitrator will have authority to determine an equitable split of the cost when a prevailing Party cannot be determined.

#### ***Section 13.11.2***

The cost of a reporter or transcript shall be shared equally when the Parties mutually agree to have one, or where requested by the arbitrator. Absent mutual agreement, either Party may unilaterally request that a transcript be prepared but must bear all costs incurred in its preparation. If the nonmoving Party requests a copy of the transcript, the Parties will share the entire cost of the transcript.

#### ***Section 13.11.3***

If the Parties resolve the grievance prior to the arbitration hearing, any cancellation fees shall be borne equally. If a Party requests postponement, that Party shall bear the full cost of any rescheduling fees or postponement fees.

#### ***Section 13.11.4***

In the event that a Party withdraws an invocation of arbitration after the arbitrator's deadline for cancellation or postponement of the arbitration, that Party will bear all of the costs imposed by the arbitrator for the cancellation of the hearing date.

### **Section 13.12 Attorney Fees and Expenses**

#### ***Section 13.12.1***

The Union may request reasonable attorney fees and expenses that are consistent with government statute, regulation, and/or case law within fifteen (15) days of the arbitrator's award, if not already included in the remedy sought. Any such fees and expenses may only be granted in accordance with applicable laws (e.g., the Backpay Act).

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**Section 13.12.2**

1. An arbitrator has jurisdiction to resolve a motion for attorney fees from the Union after an award becomes final and binding. The arbitrator must provide the Agency with an opportunity to respond in writing to a request for attorney's fees.
2. The arbitrator's award on the issue of attorney fees will be issued within thirty (30) days of the arbitrator's receipt of the Agency's response to the Union's request.
3. The arbitrator will provide a detailed explanation of why fees were or were not granted, as well as the hours and rates allowed.
4. All charges of the arbitrator incurred in connection with the award of attorney fees will be borne by the nonprevailing Party.

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## ARTICLE 14. ALTERNATIVE DISPUTE RESOLUTION (ADR): MEDIATION

### Section 14.1 Purpose

The Agency and the Union strongly support the use of ADR problem-solving methods in resolving various employee conflicts and disputes as an alternative to traditional methods of early intervention and dispute resolution. The Union and Agency, at all levels, are highly encouraged to use ADR problem-solving methods as a priority to resolve disputed matters.

### Section 14.2 Definitions

ADR is an umbrella phrase used to describe problem-solving methods or techniques, such as mediation, that are efficient and cost-effective. An essential element of ADR is that it provides Parties the opportunity to identify common ground and concurrences and prepare mutually acceptable options to resolve disputed issues. It is a process that increases both the likelihood and quality of resolutions and/or settlements. ADR may be used for EEO complaints, grievances, and workplace disputes.

Mediation is an ADR process available to all employees covered by this Agreement. Mediation resolutions/settlements shall not be precedential unless specifically agreed to by the Parties.

Mediation involves the intervention of a third person, or mediator, into a dispute to assist the Parties in negotiating a jointly acceptable resolution of issues in conflict. Mediation may be inappropriate for the reasons set forth in 5 U.S.C. § 572.

ADR may be used at any stage of a complaint; specific time frames relevant to the applicable process will be held in abeyance while the employee is engaged in mediation.

### Section 14.3 Legal Authority

Administrative Dispute Resolution Act of 1996 (Pub. Law 104-320), 29 CFR § 1614.102(b)(2), and Management Directive 110, Chapter 3, Alternative Dispute Resolution for EEO Matters.

### Section 14.4 Participants

Participants in the mediation process normally include the parties in dispute, a management official with authority to resolve the dispute appointed by the Agency, and the mediator. The Parties to mediation are entitled to bring a representative of their choosing to assist them in the process.

1. The initiation of ADR is voluntary for the employee. Supervisors and managers are expected to attempt to resolve conflicts at the lowest levels in the organization and at the earliest stage where appropriate.
2. The mediator has no decision-making authority. While the Parties understand that the mediator can help them create solutions, the Parties themselves ultimately share responsibility for the outcome. The mediator facilitates communications between the Parties in a private and confidential meeting and helps the Parties generate optional solutions.
3. If the Parties do not reach an agreement, participants in the mediation may exercise the right to pursue the matter in an administrative or judicial proceeding. No person participating in mediation is to be penalized in any way because of such participation or because the Parties did not reach a resolution.

### Section 14.5 Mediation Process

The Agency, through the use of a neutral ADR Program Coordinator, will arrange for the services of a trained mediator. The ADR Program Coordinator will provide the employee and the designated Agency official with the name of the mediator.

Either Party may ask that another mediator be obtained if there is a compelling reason, such as conflict of interest, which may compromise the integrity and impartiality of the process. The Party requesting a different mediator must notify the ADR Program Coordinator within three (3) business days of receipt of the mediator's name. Upon receipt of such notification, the ADR Program Coordinator will make a determination as to whether another mediator should be requested.

1. The ADR Program Coordinator will arrange for the meeting to be held at a neutral location, normally within the respective facility, which will ensure that the mediation is private and confidential.



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2. Each Party is encouraged to be open and candid about his/her point of view.
  3. The mediator, as a neutral third Party, assists the parties in considering alternatives and options that they might not have considered.
  4. The process ends when a determination is made that a resolution and/or settlement has, or has not, been reached; or when either Party or the mediator decides to terminate the mediation.
  5. If a resolution and/or settlement are not reached during a mediation session and the dispute is litigated in any administrative or judicial proceeding, neither the mediator nor his/her notes can be subpoenaed by either Party. Confidentiality will be maintained in accordance with 5 U.S.C. § 574.
  6. If the Union or employee (self-represented) believes that the Agency is not carrying out the terms of the settlement, the Party must notify the ADR Program Coordinator in writing within thirty (30) days of the date the Party first became aware of the alleged breach.

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## ARTICLE 15. UNFAIR LABOR PRACTICES

The Union and Agency recognize the mutual benefits to be gained from in-house resolution of ULP charges. Toward this end, the Parties agree to the following:

1. Provide each other with a copy of any ULP charge ten (10) workdays before the charging Party files it with the FLRA.
2. Provide the other Party in writing with the specific event(s) that caused the ULP charge to be submitted and suggested ways to correct the alleged violation.
3. Review of the alleged violation and meet with the charging Party to discuss its findings.
4. Take action appropriate to correct and/or prevent recurrence of the violation or problem that precipitated the charge. When either Party takes such action, the other Party agrees not to grieve the matter and not to file the ULP with the FLRA.

No part of this Article is to be construed as a waiver of either Party's right to file an ULP charge in cases where the issue is unresolved and the statutory time limit (180 days) would otherwise be violated.

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## **ARTICLE 16. MID-TERM BARGAINING**

### **Section 16.1 Purpose**

#### ***Section 16.1.1***

This Article shall be administered in accordance with 5 U.S.C. Chapter 71 and this Agreement. The purpose of this Article is to prescribe the criteria and procedures by which the Parties shall engage in negotiations during the term of the Agreement.

#### ***Section 16.1.2***

While the Agreement is in effect, the parties shall negotiate over matters not covered by the Agreement to the extent required by law.

#### ***Section 16.1.3***

Either Party may propose changes in conditions of employment during the life of the Agreement, which are not already expressly contained, inseparably bound up with and plainly an aspect of a subject covered by the Agreement.

### **Section 16.2 Bargaining Obligations**

#### ***Section 16.2.1 National-Level Bargaining***

During the term of this Agreement, the Agency shall transmit at the level of recognition to AFGE Council 241 its proposed changes relating to personnel policies, practices, and general conditions of employment that have an Agency-wide impact or affect more than one (1) facility. For the purposes of this Agreement, GSA leased space within the Washington, DC metropolitan area will be considered part of the Headquarters (HQ) facility. The proposed changes shall be sent to the Council President and/or designee. In addition, the Agency shall send a copy in writing to the Local President and/or designee impacted by the change. The Parties will follow the bargaining procedures set forth under Section 16.3.

#### ***Section 16.2.2 Local-Level Bargaining***

The Agency shall give in writing to the Local President and/or designee proposed changes relating to personnel policies, practices, and conditions of employment. In addition, a copy will be sent to the Council President and/or designee. The Parties will follow the bargaining procedures set forth under Section 16. 3.

### **Section 16.3 Procedures for Negotiating During the Term of the Agreement**

#### ***Section 16.3.1 Notice of Proposed Change***

For management-initiated changes where the Agency has a duty to bargain, the Agency will provide the Union with reasonable advance written notice, not less than twenty days (20) for national issues and ten (10) for local issues, prior to the proposed implementation date of any change affecting conditions of employment, except in emergency conditions outside the Agency's control.

At a minimum, the notice will contain the following information:

1. The scope of the proposed change;
2. A description of the change;
3. An explanation of the initiating Party's plans for implementing this change;
4. An explanation as to why the proposed change is necessary; and
5. The proposed implementation date.

#### ***Section 16.3.2 Initiating Negotiations***

1. The Union must demand to bargain, if it so desires, within the notice periods contained in Section 16.3.1 of this Article, by submitting a written request to the HQ Labor Relations Area (LRA) for national issues under Section 16.2.1 or the servicing LRA for local issues under Section 16.2.2.

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2. During the same notice periods described in Section 16.3.1 of this Article, the Union may submit a written request for a briefing and/or a request for additional information in order to clarify or determine the impact of the proposed change. A request for a briefing and/or additional information will not serve as a basis to post-pone or delay a demand to bargain unless timeframes are mutually extended according to Section 16.3.4 of this Article.
  3. Demands to bargain must include a written notice of concerns or a statement of interests regarding the proposed changes in conditions of employment.

***Section 16.3.3 Agreement to Negotiate***

1. The Parties will meet to discuss negotiations within twenty-five (25) from the receipt of the initial notice of the proposed change for national issues, and fifteen (15) for local issues.
2. The Parties agree to negotiate in good faith through appropriate representatives for the purpose of collective bargaining as required by law and this Agreement. The Union must submit its proposals at least five (5) days prior to the first negotiation session.

***Section 16.3.4 Timeframes***

The Parties may extend or reduce timeframes prescribed by this Article through mutual agreement.

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## ARTICLE 17. LABOR MANAGEMENT RELATIONS MEETINGS

### Section 17.1 Purpose

All Labor Management Relations (LMR) meetings covered by this Article shall be to promote and facilitate understanding and constructive and cooperative relationships between the Union and the Agency. Therefore, the Parties agree to participate in joint LMR meetings at the local and national levels. Meetings under this Article shall provide the parties with a structured opportunity to hold discussions on personnel policies, practices, working conditions, conditions of employment, and matters of general interest.

1. Items that may be discussed during these meetings include, but are not limited to the following:
  - A. Interpretation or application of the language of this Agreement that deals with personnel policies and practices and other working conditions;
  - B. Systemic or operational concerns related to equal employment opportunity, training, safety and health, and performance management;
  - C. Problems that may arise in the implementation and administration of this Agreement;
  - D. Matters of mutual concern and interest concerning personnel policies and practices, or matters affecting working conditions not explicitly addressed in this Agreement; and
  - E. Systemic concerns regarding the grievance, arbitration, or ULP processes where patterns of behavior on either Party appear to exist and are adversely affecting the relationship of the parties. Discussing specific grievances, arbitrations, ULPs and topics that are currently in process are not appropriate for discussion at these meetings.
2. The consultation or informal discussions during these meetings shall not prejudice either Party from exercising its bargaining rights should the consultation, or informal discussions cover a mandatory subject for bargaining. If a Party elects to exercise such a right, the Parties agree that the LMR meetings are not the proper forum to engage in such bargaining.

### Section 17.2 Notes

The Parties understand the importance of having a record of the LMR meetings; therefore, a record of obligations, action items, and commitments will be maintained by both parties to reflect the structure, provide a baseline, and track the Parties' progress. Upon conclusion of the meetings, the Agency will submit a copy of the notes to the Union for review and comment within five (5) business days. The Union must provide comments and/or concurrence within three (3) business days. Failure to provide comments and/or concurrence within that timeline will deem the LMR meeting notes accurate and official. Under no circumstances will any meeting be recorded or videotaped on any electronic device, unless mutually agreed to by both parties in writing.

### Section 17.3 Local Meetings

1. Meetings will be held once a month with the servicing Labor Relations Area at each location covered by this Agreement. Local meetings shall be held at a time and place mutually agreed to by the Parties. If either Party wants to meet more than once a month, it should be agreed by the Parties. Each Party determines who comes to the meeting.
2. Unless otherwise mutually agreed by the Parties, both the Agency and the Union will have no more than five (5) representatives present.
3. All Union representatives attending this meeting will be allowed a reasonable amount of official time for preparation, meeting, and debriefing. The release of Union representatives for official time shall be handled in accordance with Article 10, Official Time.
4. The Parties will exchange agendas ten (10) days before the scheduled meeting. In cases where neither Party has an agenda, the meeting will not be held.
5. Local LMR meetings may be up to two (2) hours in duration unless otherwise mutually agreed to by the Parties.

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## **Section 17.4 National Meetings**

1. A National LMR meeting shall be held every six (6) months, or sooner on matters of an urgent nature, at a mutually agreeable time, date, and location.
2. Designated Agency and Union officials will alternate travel to each of the locations where bargaining unit employees are located.
3. The National LMR meeting shall be held with the Council President and each Local President or designee in person or virtually.
4. All Union representatives attending this meeting will be allowed a reasonable amount of official time for preparation, meetings, and debriefing. The release of Union representatives for official time shall be handled in accordance with Article 10, Official Time.
5. The Union participants' travel and per diem will be paid by the Agency in accordance with Federal Travel Regulations (FTR). One (1) meeting per year may be conducted virtually.
6. The duration of these meetings will be agenda driven and mutually agreed to by the Parties. The Parties will normally exchange agendas thirty (30) days prior to the scheduled meeting. In cases where neither Party has an agenda, the meeting will not be held.
7. The designees and/or participants representing each Party must have approving authority. The Parties will mutually agree on action items and will document them under a MOU that will be signed by the duly appointed individuals representing the Parties. This process is not considered bargaining, but a commitment by the Parties to resolve matters of mutual concern.

## **Section 17.5 Meeting With the Director**

Meetings with the Director shall be held with the Council 241 President and each local President or designee annually, or as otherwise agreed by the Parties. Requests for these meetings from Council 241 leadership should be submitted in writing four (4) months before the preferred meeting date.

The Director, designated Agency, and Union officials will alternate travel to each of the locations where bargaining unit employees are located. The location of each meeting will be determined by the Parties. Designated members may attend virtually.

The Union participants' travel and per diem will be paid by the Agency in accordance with FTR. If more than one meeting is held, that meeting may be conducted virtually.

The meeting should be agenda driven and not normally exceed two (2) hours unless extended by the Parties. The Union will normally submit an agenda to the Headquarters (HQ) LRA sixty (60) days prior to the scheduled meeting.

If the Director has an item(s) to include on the agenda, he/she will submit it to the Council President normally within sixty (60) days prior to the scheduled meeting.

Topic(s) raised during the meeting not included on the official agenda, will be discussed by mutual consent.

All Union representatives attending this meeting will be allowed a reasonable amount of official time for preparation, meetings, and debriefing. The release of Union representatives for official time shall be handled in accordance with Article 10.

All designated Agency and Union officials not traveling will be able to attend the meeting virtually. Local Union leadership at the hosting location will determine which of its bargaining unit employees or Union officials will attend the meeting in person.

The Parties will mutually agree on action items and will document them under an MOU that will be signed by the duly appointed individuals representing the Parties. This process is not considered bargaining, but a commitment by the Parties to resolve matters of concern.

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**Section 17.6 Official Time for Travel to Attend Meetings**

Union representatives attending the National LMR meeting and/or the meeting with the Director shall be entitled to official time for travel in accordance with FTR.

This shall not preclude Union representatives from utilizing official time, annual leave, or leave without pay (LWOP) to conduct other appropriate business before returning to their duty stations, provided that the use of official time, annual leave, or LWOP does not exceed any limitations imposed by law, rule, or regulation, and is approved by the Agency under existing administrative procedures and the conditions of this Agreement. The release of Union representatives for official time shall be handled in accordance with Article 10.

Payment of travel expenses shall be in accordance with this Article and Article 50, Official Travel. The Agency is not obligated to pay additional travel expenses if the Union extends its travel beyond the authorized travel dates.

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## **ARTICLE 18. JOINT LABOR-MANAGEMENT TRAINING**

### **Section 18.1 Jointly Sponsored Labor-Management Relations Training**

1. The Parties agree that jointly sponsored Labor-Management Relations (LMR) training is of mutual benefit when it covers appropriate areas, such as contract administration, grievance handling, and information relating to federal personnel/labor relations laws, regulations, and procedures. Training that relates to internal Union business will not be conducted or attended on official time.
2. The Parties will provide joint LMR training as appropriate. The Agency and the Union normally will have equal representation at any training provided under this Article. Any decisions made regarding the content or deployment of joint LMR training will be made by mutual agreement of the Parties. The joint training may consist of topics such as Interest-Based Bargaining, Alternative Dispute Resolution, Cooperative Labor Management Relations, communication skills, etc.
3. Joint LMR training will be recorded in each employee's individual training record.
4. Joint LMR training will normally be presented by a third Party, unless it is mutually agreed that the Parties will develop and present the training.
5. Local facilities or virtual trainings are encouraged to give recognition to individuals or groups who materially advance the process of LMR training.
6. The Agency will ensure that appropriate resources are made available for joint LMR training.
7. The Parties are encouraged to share training materials or experiences to nurture better LMR training.

### **Section 18.2 Joint Collective Bargaining Agreement Training**

The Parties agree to conduct voluntary Collective Bargaining Agreement training either virtually or in person for employees and/or supervisors. The training will be conducted by the servicing Labor Relations Area (LRA) and Union the respective Local for that location. Any costs associated with this training will be covered by the Agency. The servicing LRA and Union will prepare training material and attend training jointly.

### **Section 18.3 Official Time**

Arrangements for the use of official time for training will be jointly determined by the Agency and the Union. Training may be conducted locally or Agency-wide. Department personnel responsible for scheduling work will be given appropriate and adequate notice to include specific agendas of scheduled LMR training to ensure maximum attendance.

Union representatives participating in this training will be granted official time in accordance with Article 10, Official Time.



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## ARTICLE 19. LABOR-MANAGEMENT COUNCIL

### Section 19.1 History

Since the inception of 5 U.S.C. § Chapter 71, cooperation and communication have been and do remain goals of Labor-Management Relations (LMR). The implementation and maintenance of a cooperative and respectful working relationship between Labor and Management is known as “Partnership” and was established by Executive Order 12871 and a Presidential Memorandum dated October 28, 1999.

The Office of Personnel Management issued guidance on May 18, 2021, providing agencies the discretion under the Federal Service Labor-Management Relations Statute (5 U.S.C. § Chapter 71) to adopt a labor relations strategy best suited to their own needs, including the establishment of labor management forums. Further, the White House Task Force on Worker Organizing and Empowerment encourages the establishment of Labor Management forums, which fosters collaboration, is based on trust, and improves decision making and organizational performance.

### Section 19.2 Purpose

The desire and intent of this Article is to describe and encourage effective Labor-Management cooperation. In the interest of performing the Agency’s mission, providing efficient and effective service to the public, improving morale and the quality of work-life for employees, the Parties will strive to engage with each other in a cooperative, collaborative manner through Partnership and the Labor-Management Council. The Parties support and encourage cooperative Labor-Management relationships at all levels.

Partnership involves the design, implementation, and maintenance of a cooperative working relationship between Labor and Management through maximum pre-decisional involvement to achieve common goals.

Therefore, the Agency, to the extent permitted by law, will allow employees and their Union representatives to have pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. § 7106; provide adequate information on such matters expeditiously to Union representatives where not prohibited by law; and make a good faith attempt to resolve issues concerning proposed changes in conditions of employment, including those involving the subjects set forth in 5 U.S.C. § 7106(b)(1), through discussion in its Labor-Management Forums.

This pre-decisional involvement will be accomplished through the Labor-Management Council. The Agency and Union leadership must be committed to the principles of Partnership for this effort to be successful.

To this end, the Parties will engage in Partnership as delineated in the Labor-Management Council Charter.

The Union or the Agency may withdraw from participation in the Labor-Management Council as necessary with no duty to bargain its withdrawal. Neither the provisions of the Labor- Management Council Charter nor the terms of this Article will be enforceable once either Party has withdrawn from participation.

Nothing in this Article shall be construed to impair or otherwise affect the authority granted by law to the Agency or the Union.

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## ARTICLE 20. WORK GROUPS/FOCUS GROUPS

The purpose of this Article is to provide employees an opportunity to provide input in a group setting on existing or future Agency policies, procedures, initiatives, or other matters affecting conditions of employment.

### Section 20.1 Workgroups

When the Agency intends to establish a workgroup to gather input and/or recommendations on matters concerning conditions of employment, and assigns employees to the workgroups, the Union will be provided seven (7) days advance notice and the opportunity to participate, except in unexpected circumstances.

1. The Agency will determine the number of employees, qualifications, and job types for each workgroup. The Agency will provide the Union with notice of the proposed site(s), date(s), subject(s), and time(s) of the planned workgroup discussions. To the extent possible, the Agency will schedule workgroup meetings for dates and times that minimize any adverse impact on employees' participation.
2. The Agency agrees to consult with the Union when assigning employees to workgroups.
3. The Agency will invite the Union to participate in all existing workgroups that affect conditions of employment as of the effective date of this Agreement. Upon request from the Union, the Agency will provide a list of all existing workgroups to the Union within sixty (60) days of the effective date of this Agreement.

### Section 20.2 Focus Groups

To the extent practicable, the Agency will notify and consult with the Union a minimum of seven (7) days in advance when it intends to form and/or assign employees to the focus group to gather input and/or recommendations on matters concerning conditions of employment.

The Agency will determine the number of employees, qualifications, and job types for each focus group. The Agency will provide the Union with notice of the proposed site(s), date(s), subject(s), and time(s) of the focus group discussions planned. To the extent possible, the Agency will schedule focus group meetings for dates and times that minimize any adverse impact on employees' participation.

### Section 20.3 Other Means of Gathering Employee Input

If the Agency intends to solicit input from employees concerning conditions of employment by any means other than what is described in this Article or Section 5.2.4 of Article 5, the Agency will consult with the Union in advance.

### Section 20.4 General Matters

1. Nothing in this Article should be construed as applicable to activities performed under the authority of the Agency's Labor-Management Council.
2. Employees will not be precluded from earning credit hours, overtime, or compensatory time in lieu of overtime, should their participation in activities described in this Article exceed the normal tour of duty for that day pursuant to this Agreement.
3. No employee shall be subject to retribution/reprisal for expressions of his or her personal opinions. However, this should not be interpreted as allowing employees to engage in misconduct.
4. The Agency will not issue any publication that references these meetings as "AFGE approved", implied as having AFGE approval, or presented in such a manner where the audience would reasonably infer AFGE approval without first obtaining concurrence from the Union.
5. Any reports or data generated by the Agency as a result of employee input gathered under the provisions of this Article will be provided to the Union.

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## ARTICLE 21. REORGANIZATIONS

### Section 21.1 General

Reorganization is defined as establishing, abolishing, realigning a function, renaming, or redescribing any organizational structure assigned an organization code. This Article is subject to all applicable provisions of both 5 U.S.C. Chapter 71 and this Agreement.

### Section 21.2 Provisions

The Agency will notify and offer to meet with the Union regarding all reorganizations in order for the Parties to assess the potential impact on employees normally at least ten (10) business days, for reorganizations on the (local level), and twenty (20) business days, for reorganizations (on the national level), prior to the effective date of the proposed reorganization.

1. If adverse impact is identified, the Agency will provide the following:
  - A. Current and proposed organizational charts, functional statements, and names of affected bargaining unit employees by pay plan, series, grade, and title;
  - B. Information, if any, concerning adverse impact on employees; and
  - C. Identification of any new bargaining unit positions created as a result of the proposed reorganization.

### Section 21.3

1. Any demand to bargain will identify the potential adverse impact to bargaining unit employees and must be submitted during the notice period described in Section 21.2 (A) of this Article. The Agency will provide an opportunity to bargain with the procedures contained in Article 16, Midterm Bargaining will then apply.
2. The Union and the Agency agree that reorganizations will not create an adverse impact on employees and may be implemented subsequent to satisfying Section 21.2 of this Article, or after consultation and mutual agreement of the Parties.
3. Physical relocations resulting from reorganizations will follow the provisions under Article 22, Physical Relocations.

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## **ARTICLE 22. PHYSICAL RELOCATIONS**

### **Section 22.1 General**

This Article pertains to physical relocations within existing worksites and temporary off-site facilities.

This Article is subject to all applicable provisions of both 5 U.S.C. Chapter 71, and this Agreement.

The Parties recognize that relocating employees represents a change in their working conditions. Therefore, the Agency will keep the Union informed by discussing and attempting to resolve issues concerning current and future related changes.

The Parties will discuss, as they are raised by the Union, unforeseen issues arising from relocation and will attempt to resolve those having an adverse impact on employees in a mutually agreeable manner. In addition, the Parties understand that there could be situations, by virtue of work necessity or other extraordinary circumstances, that may require prompt and immediate action in order to maintain or support adequate workflow for employees, customers, and/or sponsors. When these situations arise, the Agency will immediately notify the Union and discuss ways to more expeditiously implement movement of employees outside the timeframes agreed to under this Article. This may include the Parties agreeing to resolve outstanding issues after employees have been relocated.

### **Section 22.2 Procedures**

The Agency agrees to:

1. Except in extraordinary circumstances, or issues outside of the Agency's control, notify the Union of any physical relocation of five (5) or more bargaining unit employees ten (10) business days before the intended relocation;
2. Provide names, current location, receiving location, pay plan, series, grade, and title of all affected employees;
3. Provide floor plans of the receiving and losing area, containing square footage of space, the location of workstations, furniture, and equipment, when available;
4. Place employees in space sufficient for the total number of employees. The space available for workstations will be distributed as equitably as possible among those bargaining unit employees occupying the area. In addition, the space will meet applicable standards and/or guidelines for safety, lighting, heating, cooling, ventilation, and access to electrical outlets necessary for work-related equipment;
5. Ensure that the new workspace is suitably clean and substantially ready for use at the time of the move; and
6. Unless there is a mutual agreement for an extension, the Parties will meet as soon as possible, but no more than five (5) business days of a Union request to the servicing Labor Relations Area to discuss any problems relating to the implementation of a physical move, special circumstances associated with a particular move, or alleged noncompliance with this Article. Upon mutual agreement that the criteria in items "1" through "5" above have been met, the Agency may implement the proposed relocation.

### **Section 22.3 Physical Moves—Fewer Than Five Employees**

Sections 22.2 (4) and 22.2 (5) of this Article apply when the Agency is moving fewer than five (5) employees.

Any employee physically relocated from his/her usual worksite should normally be given three (3) scheduled workdays advance notice of such a move.

Individual issues arising from such relocation will be handled in accordance consistent with this Agreement.

### **Section 22.4 Communication**

The Parties agree that there be full and open communications with all employees affected by a physical relocation during the relocation process.

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## **ARTICLE 23. EQUAL EMPLOYMENT OPPORTUNITY AND HARASSMENT PROHIBITED BY LAW**

### **Section 23.1 Policy**

The Agency and the Union affirm their commitment to the policy of providing Equal Employment Opportunity (EEO) to all employees, to establish the Agency as a model agency, and to prohibit discrimination and harassment (sexual and nonsexual) on the basis of race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), age (40 years of age or older), national origin, disability (physical or mental), genetic information (including family medical history), and/or reprisal/retaliation for prior EEO activity, and other protected classes as defined by the Equal Employment Opportunity Commission (EEOC).

In addition, the Parties recognize their commitment to the policy of prohibiting discrimination on the basis of marital status, and/or political affiliation, as well as to the policy of prohibiting retaliation for opposing any practice or protected activity made unlawful by Title VII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act (ADEA) of 1967; the Americans With Disabilities Amendments Act (ADAAA), as amended; the Rehabilitation Act of 1973, as amended; the Equal Pay Act, of 1963, as amended; Genetic Information Nondiscrimination Act (GINA) of 2008; and all other applicable federal laws, regulations, and Executives Orders related to unlawful discrimination.

### **Section 23.2 Definitions**

The term “disability” means, with respect to an individual:

1. Has a physical or mental impairment that substantially limits one or more major life activities of such individual;
2. Has a record of such impairment; or
3. Is regarded as having such an impairment.

The EEOC has determined that a medical condition does not need to be long-term, permanent, or severe to be substantially limiting. Also, if symptoms come and go, what matters is how limiting the symptoms are when they are active.

Pursuant to 29 CFR §1630.2(m), the term “qualified” with respect to an individual with a disability, means that the individual satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation (RA), can perform the essential functions of such position. Refer to 29 CFR §1630.3 for exceptions to this definition. Additional definitions related to disability may be found in 29 CFR §1630.2, including direct threat and undue hardship. 29 CFR §1614.203 (d)(1) provides information regarding special appointing authorities for persons with disability.

### **Section 23.3 Equal Employment Opportunity Program**

The Agency’s EEO Program is designed to promote equal employment opportunity in every aspect of the Agency’s personnel policies and practices in accordance with applicable law and government-wide rules and regulations. The Agency shall conduct a continuing campaign to eliminate discrimination from its personnel practices and policies and employment conditions consistent with this Agreement, 29 CFR 1614, and the U.S. EEOC applicable Management Directives (MD).

Pursuant to 29 CFR § 1614.102, the Agency will continue to have a positive, ongoing, results-oriented, and affirmative employment-opportunity program, and will continue to ensure that all managers and employees are trained accordingly.

### **Section 23.4 EEO Advisory Committee**

The Parties agree to maintain an Equal Employment Opportunity Advisory Committee (EEOAC), as delineated in the EEOAC charter. The Parties further agree that the charter may be amended by the EEOAC with approval from the Labor Management Council. This does not confer upon any Party the right to open any portion of this Agreement.

### **Section 23.5 Participation in EEO and Affirmative Employment Plans**

#### **Section 23.5.1**

The establishment and implementation of EEO Affirmative Employment Plans and related plans is a fundamental Agency objective.

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### **Section 23.5.2**

The Agency will continue to provide overall management support and budgetary planning to achieve affirmative action objectives and to establish and to maintain effective EEO programs that cover all aspects of equal employment opportunity throughout the Agency, as outlined in 29 CFR 1614.102 and EEOC MD 715 (MD-715).

The Agency will provide a copy of its EEO and Affirmative Employment Plans, related plans, and MD-715 reports to the EEOAC on an annual basis.

### **Section 23.5.3**

Consistent with the EEOC Guidelines for Affirmative Employment Plans and Model EEO Programs, the Agency's EEO plans shall include, at a minimum:

1. A comprehensive assessment and program analysis of the current status of the Agency and all affirmative action efforts including:
  - A. Organization and Resources; and
  - B. Workforce Analysis;
    - (i) Analysis of the Agency's workforce by Professional, Administrative, Technical, Clerical, and Other White-Collar Occupational Categories and the Blue-Collar Occupational Category (PATCOB), grade groupings, and major occupations, and other required categories or groupings;
    - (ii) Comparison of the Agency's current workforce with the previous year's workforce; and
    - (iii) Comparison of the Agency's workforce with the appropriate civilian labor force for each demographic area.
  - C. Discrimination complaints (review basis, issues, locations, trends, dispositions, findings of informal and formal complaints, and EEO and administrative ADR);
  - D. Recruitment and Hiring;
  - E. Training Opportunities and Employment Development Programs;
  - F. Promotions and Other Internal Selections;
  - G. Separations, including Disciplinary Actions;
  - H. Program Evaluations; and
  - I. Performance Recognition Incentives and Awards.
2. An examination of employment policies, procedures, and practices to identify actual problems, barriers, and "triggers" that alert the Agency to the existence of problems or barriers which may limit employment opportunities to certain groups or protected classes.
3. The development of plans, objectives, and action items to address and to correct problems and barriers, including:
  - A. A clear statement of specific and measurable objectives and supporting action items which will address and resolve problems and barriers identified;
  - B. Assignment of a responsible official for each objective and action item; and
  - C. A target date for completion of each objective and action item.

## **Section 23.6 Information for Employees**

### **Section 23.6.1**

The Agency will continue to provide a toll-free phone number for access by all employees who require assistance of an EEO counselor, and the Agency shall make available to employees written information describing the Agency's EEO program, the Affirmative Employment Plan, and the EEO Complaint process. This information will be posted electronically and/or on the Agency bulletin boards. It will include:

1. A toll-free phone number for the EEO office;
2. A dedicated email/website address to contact an EEO counselor and/or initiate an informal EEO complaint; and
3. The flowchart of the discrimination complaint process and all other information required by law.

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## **Section 23.7 Discrimination Complaints**

### **Section 23.7.1 Complaint Options**

Any employee who believes that he or she has been discriminated against on the grounds set forth in Section 23.1 of this Article may file any one of the following:

1. A formal EEO complaint of discrimination with the Agency;
2. A grievance, pursuant to the provisions of Article 12, Negotiated Grievance Procedure;
3. An appeal to the Merit Systems Protection Board (MSPB) involving a mixed case, as defined in Section 23.8.5; or
4. A complaint of discrimination involving allegations based on marital status or political affiliation with the Office of Special Counsel (OSC).

### **Section 23.7.2**

A current or former employee alleging discrimination and/or harassment (sexual and nonsexual) on the basis of race, color, religion, sex (including sexual harassment and pregnancy discrimination), sexual orientation, gender identity, age (40 years of age or older), national origin, disability (physical or mental), genetic information (including family medical history), and reprisal may, in some cases, file a discrimination complaint under both the EEO process and with OSC.

Complaints and appeals to the MSPB, the EEOC, and the OSC will be filed pursuant to such regulations and time limitations as prescribed by those agencies.

### **Section 23.7.3**

At the conclusion of the EEO precomplaint/informal interview process, the EEO counselor will inform employees in writing of their right to file a formal EEO complaint.

### **Section 23.7.4**

A discussion with an EEO counselor in no way precludes the filing of one of the complaints listed in Section 23.8.1 and 23.8.2 that is otherwise timely.

### **Section 23.7.5**

In accordance with 29 CFR 1614.302:

1. A mixed-case complaint is a complaint of employment discrimination filed with a federal agency based on race; color; religion; sex; national origin; age; disability; genetic information; or pregnancy, childbirth, or related medical conditions related to or stemming from an action that can be appealed to the Merit Systems Protection Board (MSPB). The complaint may contain only an allegation of employment discrimination or it may contain additional allegations that the MSPB has jurisdiction to address.
2. A mixed-case appeal is an appeal filed with MSPB that alleges that an appealable Agency action was effected, in whole or in part, because of discrimination on the basis of race; color; religion; sex; national origin; disability; age; genetic information; or pregnancy, childbirth, or related medical conditions.

## **Section 23.8 EEO Process**

### **Section 23.8.1**

Consistent with 29 CFR § 1614 and Section 23.8.1 of this Article, an employee must initiate contact with a Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within 45 days of the effective date of the action.

The date an individual requesting counseling services on behalf of an aggrieved employee either in person, telephonically, or through email will be considered the date the counseling is initiated.

The complaint process afforded to employees must follow the procedures set forth by government-wide regulations. The flowchart referred to in Section 23.7.1 (3) will be followed.



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### **Section 23.8.2**

EEO counselors will complete their duties within thirty (30) calendar days of the initial counseling contact, unless the parties mutually agree in writing to extend the counseling period. The agreed-upon extension must include a statement identifying the additional amount of time that has been agreed upon.

### **Section 23.8.3**

The Agency will provide employees with a place to meet privately with EEO counselors, if not immediately, within a reasonable amount of time, normally within twenty-four (24) hours.

## **Section 23.9 Protections**

Any person who has alleged, filed, previously filed, served as a representative for, or a witness concerning an EEO complaint, will be free from coercion, interference, dissuasion, and reprisal.

## **Section 23.10 Official Time**

### **Section 23.10.1**

Official time is granted pursuant to 29 CFR §1614.605. The overall hours of official time afforded to a representative for both preparation and attendance at meetings and hearings is determined from the point at which the employee initially contacts the EEO office. A reasonable amount of time may be granted for an employee and employee representative during the initial pre-complaint contact to discuss issues. In addition, employees and/or their representatives will be provided a reasonable amount of official time to prepare and present a formal EEO complaint. Official time for such purposes typically will include time to assemble documents to be submitted in conjunction with the complaint, time to meet or consult with the employee, and time to attend meetings and hearings.

Questions pertaining to EEO official time may be directed to the EEO office.

### **Section 23.10.2**

All requests for official time after a formal EEO complaint has been filed must be submitted by the employee and/or the employee's representative to his or her supervisor/manager (or designee). The employee and/or the employee representative must have supervisory approval prior to the use of official time.

## **Section 23.11 Confidential Information**

The Agency will preserve the confidentiality of employee medical records and medical data in accordance with the Privacy Act of 1974 and other applicable laws and regulations. Written permission from the employee is required for any release of medical documents and records, except where allowed by law or government-wide regulation.

## **Section 23.12 Harassment Prohibited by Law**

The Agency and the Union recognize that harassment is prohibited by law and undermines the integrity of the employment relationship and may adversely affect the workforce.

The parties agree to emphasize the prevention of harassment prohibited by law. The Department Administrative Order (DAO) 202-955, Allegations of Harassment Prohibited by Federal Law, currently defines harassment, including sexual harassment, as:

1. The targeting of an employee for harassment because of their sex (this includes harassment that is not necessarily sexual in nature) or other protected status;
2. A pattern of pervasive harassment in the work unit including unwelcome behavior towards an individual or individuals that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment; or
3. A single incident of prohibited harassment of such a serious nature that the continued effective functioning of the unit will be impacted.

Employees must report all instances of alleged harassment to their supervisor or other appropriate management official immediately in accordance with DAO 202-955. If a conflict of interest prevents them from reporting to their supervisor, employees should report it to the Chief, Human Resources Division or Chief, Human Resources Branch. All allegations of harassment will be evaluated to determine whether it is covered by DAO 202-955. If the allegation is covered, a formal investigation will be conducted.

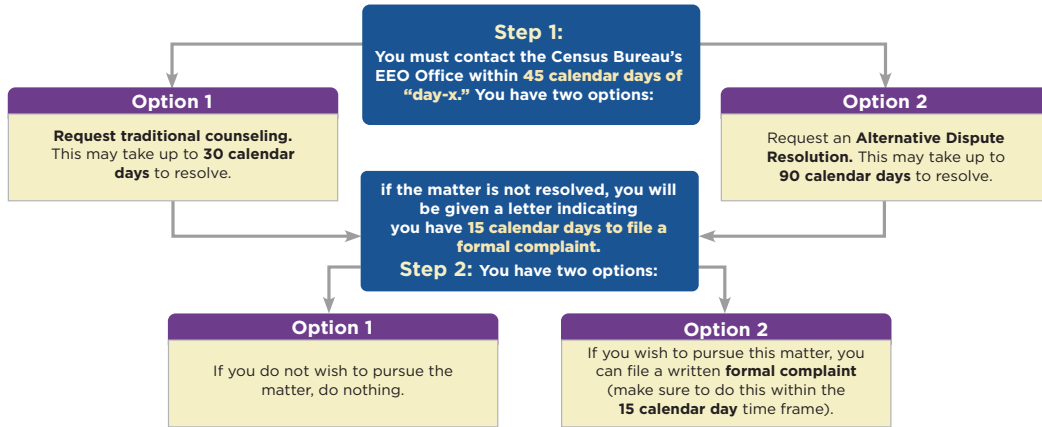


# U.S. Census Bureau

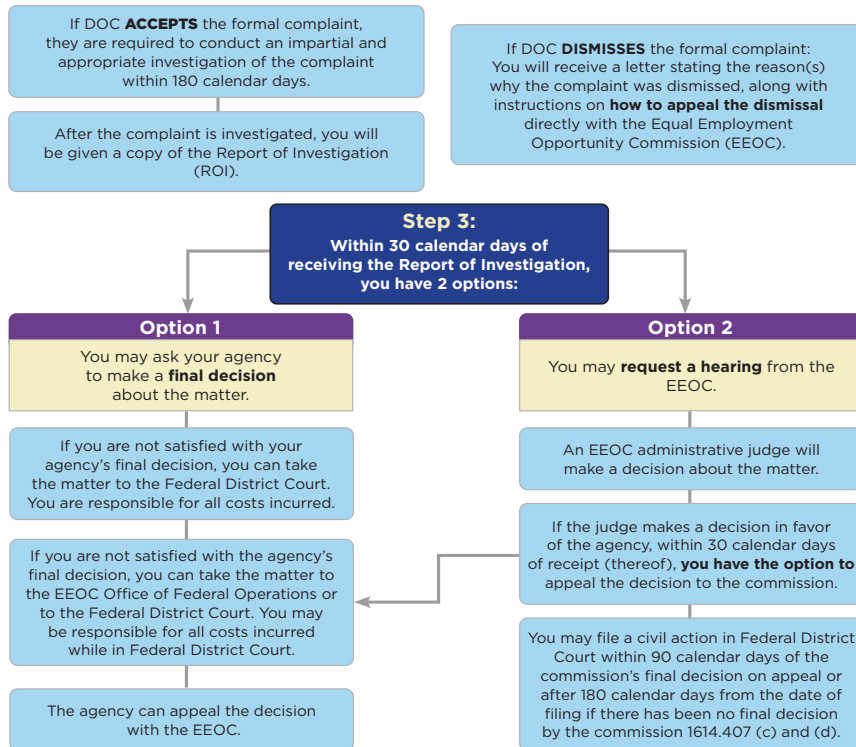
## The EEO COMPLAINT Process

An incident happens on “day-x”

If you believe this incident was a result of a decision based on your race, religion, color, sex (including pregnancy), pregnant workers (limitations related to pregnancy, childbirth, or related medical conditions), national origin, age 40 or older, genetic information (including family medical history), disability (mental or physical) or retaliation/reprisal, then the Office of Equal Employment Opportunity (EEO) complaint process is as follows:



The Department of Commerce, Office of Civil Rights (DOC) will **ACCEPT** or **DISMISS** the formal complaint.



For More information	Contact Information:	Websites:
Visit the Equal Employment Opportunity Commission's website at: < <a href="http://www.eeoc.gov">www.eeoc.gov</a> >.	<b>Headquarters and Regional Offices:</b> Office of Equal Employment Opportunity (EEO) Telephone: 301-763-2853 Toll free: 1-800-872-6096 E-fax: 301-763-9590 Email: < <a href="mailto:eeo.complaints@census.gov">eeo.complaints@census.gov</a> > Website: < <a href="http://www.census.gov/eeo">www.census.gov/eeo</a> >	< <a href="http://www.commerce.gov/ocr">www.commerce.gov/ocr</a> > < <a href="http://www.mspb.gov">www.mspb.gov</a> > < <a href="http://www.oig.doc.gov">www.oig.doc.gov</a> > < <a href="http://www.osc.gov">www.osc.gov</a> >
	<b>National Processing Center:</b> Office of Equal Employment Opportunity (EEO) Telephone: 812-218-3472 Toll free: 1-877-576-7740 E-fax: 301-763-9590 Email: < <a href="mailto:eeo.complaints@census.gov">eeo.complaints@census.gov</a> > Website: < <a href="http://www.census.gov/eeo">www.census.gov/eeo</a> >	



Revised: January 2025

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## ARTICLE 24. MEDICAL DETERMINATIONS

### Section 24.1 Purpose

Any requirement for an employee to undergo a fitness for duty examination, or provide the Agency with medical documentation to support a leave of absence, or a request for accommodation will be requested and obtained in accordance with 5 CFR § 339 Medical Qualification Determinations and DAO 215-10 Reasonable Accommodations for Employees and Applicants with Disabilities.

### Section 24.2 Definitions

For purposes of this Article and consistent with federal regulations, the following definitions apply:

1. Accommodation means Reasonable Accommodation (RA) as outlined in 29 CFR § 1630.2.
2. Medical conditions mean health impairment, which results from birth, injury, or disease, including mental disorder.
3. Medical documentation or documentation of a medical condition means a copy of a dated, written and signed statement, or a dated copy of actual medical office or hospital records, from a licensed physician or other licensed health practitioner, that contains necessary and relevant information to enable the Agency to make an employment decision. To be acceptable, the diagnosis or clinical impression must be justified according to established diagnostic criteria and the conclusions and recommendations must be consistent with generally accepted professional standards. The determination that the diagnosis meets these criteria is made by or in coordination with a licensed physician or, if appropriate, a practitioner of the same discipline as the one who issued the documentation. An acceptable diagnosis must include the information identified by the Agency as necessary and relevant to its employment decision.
4. Medical standard is a written description of the minimum medical requirements necessary for an applicant or employee to perform essential job duties as a condition of employment.
5. Physician means a licensed Doctor of Medicine or Doctor of Osteopathy, or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations.
6. Practitioner means a person providing health services who is not a medical doctor, but who is certified by a national organization, licensed by a state, and/or registered as a health professional to provide the health service in question.

### Section 24.3

All medical examinations ordered or offered pursuant to this Article shall be at no cost to the employee and performed on duty time at no charge to leave.

### Section 24.4

In all discussions with any Agency official regarding a medical determination, the employee shall be entitled to Union representation. Prior to any discussion, the employee shall be given an opportunity to contact and discuss the matter with a Union representative.

### Section 24.5 Conditions Requiring Fitness for Duty Examinations

#### Section 24.5.1

The Agency may direct an employee to undergo a fitness-for-duty examination only under those conditions authorized by this Article or in accordance with 5 CFR § 339.

#### Section 24.5.2

When the Agency directs a medical or psychiatric examination or psychological assessment, it shall inform the employee in writing of its reasons for directing the examination, the consequences of failure to cooperate, and the right to submit medical documentation from his or her private physician or practitioner. The Agency shall designate the examining physician or other appropriate practitioner, but must offer the employee an opportunity to submit medical documentation to the designated examining physician from his or her private physician or practitioner for consideration in the medical examination process.

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## **Section 24.6 Conditions When Fitness for Duty Examinations May Be Offered**

### ***Section 24.6.1***

The Agency may offer a medical examination (including a psychiatric or psychological evaluation) in situations where the Agency needs additional medical documentation to make an informed management decision. This may include situations where an employee requests, for medical reasons, a change in duty status, assignment, working conditions, or any other different treatment (including RA or return to work on the basis of full or partial recovery from a medical condition); or where the employee has a performance or conduct problem that may require Agency action. Reasons for offering an examination must be documented.

### ***Section 24.6.2***

When the Agency offers a medical examination, it shall inform the employee in writing of its reasons for doing so and the consequences of failure to cooperate. The Agency shall designate the examining physician or other appropriate practitioner and will offer the employee the opportunity to submit medical documentation from his or her private physician for review. The Agency will review and consider all documentation supplied by the individual's private physician and/or practitioner.

## **Section 24.7 Medical Documentation**

Any medical documentation requested by the Agency in order to make an informed management decision regarding an employee's performance, conduct, or ability to remain in a position because of medical reasons will be consistent with 5 CFR § 339.

## **Section 24.8 Release of Medical Information**

### ***Section 24.8.1***

All medical information or documentation furnished by the employee to the Agency will be subject to the Privacy Act of 1974 (5 U.S.C. § 552a), and disclosure will only be made to those individuals who have a need to know in order to make informed management decisions regarding the employee's performance, conduct, or request for an accommodation.

### ***Section 24.8.2***

The employee may be asked to sign a release provided by the Agency that will accompany all medical documentation. The release will identify who is authorized to review the medical documentation and for what purpose. Should further release be required, the Agency will inform the employee of the necessity for the release and secure a written consent form with an expiration date from the employee. Under no circumstances will the employee's medical documentation be released to anyone other than those specified without the prior consent of the employee.

To prevent the occurrence of an employee's benefits being denied and/or negatively impacted, the employee must release information to the Agency representative requesting information who has a need to know. Medical information related to an employee's workers' compensation claim shall be accessed and shared by the Agency in accordance with the Federal Employees' Compensation Act (FECA) and/or the regulations of the U.S. Department of Labor (DOL), Office of Workers' Compensation Programs (OWCP).

Upon request, the employee may be present during the phone call to the physician/practitioner. If the physician/practitioner is not available at that time, the Agency will conduct a follow-up telephone call to the physician/practitioner. If it is not practicable for the employee to be available, the Agency will conduct the telephone call with the employee's physician/practitioner and will follow-up with the employee when he/she is available, if needed. In cases where medical releases are signed, upon request of the employee, the Agency will advise them of Agency findings.

### ***Section 24.8.3***

Any medical documentation that is provided to the Agency by an employee will be properly secured to maintain required privacy.

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## **Section 24.9 Inability to Perform Assigned Duties**

### ***Section 24.9.1***

If the Agency determines, as a result of a fitness for duty examination or review of medical documentation, that an employee is unable to perform his or her assigned duties, the Agency will attempt to reassign the employee to another position at the same grade for which the employee qualifies and where he/she can perform the required duties.

### ***Section 24.9.2***

In the event a position at the same grade is not available, the Agency may determine if another position exists at a lower grade for which the employee qualifies and can perform the assigned duties. If a position exists, the employee will be notified of the availability of the position and given the opportunity to accept the position through a voluntary change to a lower grade.

### ***Section 24.9.3***

In the event a position cannot be located for the employee, the Agency will notify the employee of his/her right to apply for disability retirement when proposing any adverse action taken against the employee in accordance with Section 53.4, Involuntary Separation, of Article 53, Retirement, Resignation, and Separation.

If the employee elects to file for disability retirement, the employee will have options to request sick leave, annual leave, LWOP, or other nonpay status pending the receipt of a decision from the Office of Personnel Management (OPM). The Agency will consider authorizing the employee's leave request. Approvals/Denials will be in accordance with Article 46, Leave.

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## **ARTICLE 25. EMPLOYEE ASSISTANCE PROGRAM**

### **Section 25.1 General**

The Parties agree and recognize that employees in the workplace may require assistance for work/life concerns. Therefore, it is the policy of the Agency and the Union to work together to encourage employees, whose performance and conduct are adversely affected by such concerns, to seek assistance.

### **Section 25.2 Employee Assistance Program**

The Employee Assistance Program (EAP) is a voluntary, confidential program that offers professional counseling and referral services to all employees at no cost. However, the employee will bear all costs associated with their participation in a referred service. The goal of the EAP is to promote a healthy, productive workforce.

#### ***Section 25.2.1***

The Parties will encourage employees to seek employee assistance and recognize that the EAP can be important in preventing, resolving, and/or coping with personal and workplace incidents; delivering critical incident stress debriefings; and providing assistance to management and employees during Agency restructuring or other major organizational transitions or developments.

#### ***Section 25.2.2***

Employees may utilize any of the following EAP services:

1. Confidential, free, short-term counseling;
2. Referral, where appropriate, to a community service or professional resource that provides treatment and/or rehabilitation;
3. Follow-up services, as appropriate, to help an employee readjust to his or her job during and after treatment, e.g., back-to-work conferences; and/or
4. Briefings to educate management and Union officials on the role of EAP.

#### ***Section 25.2.3***

Supervisors are encouraged to offer the availability of the EAP to employees who exhibit personal and/or work-related problems. Supervisors will be advised that it is not their role to diagnose employee problems, e.g., alcohol or drug abuse, depression, etc.

#### ***Section 25.2.4***

The Agency will publicize and post information regarding the EAP in areas that are frequented by employees, such as break and lunchrooms, physical bulletin boards where applicable, Message of the Day, email, Census Central, etc. The information will include, at a minimum, the telephone number, location, and hours of operation of the EAP.

### **Section 25.3 Voluntary Participation and Employee Responsibility Section**

#### ***Section 25.3.1***

Although the existence and functions of the EAP will be publicized to employees, employees will not be required to participate or be penalized for declining a referral to the program.

#### ***Section 25.3.2***

When attending a meeting with an EAP counselor virtually or in-person, the employee must inform and receive approval in advance from his or her supervisor. However, employees are not required to advise their supervisor of their reason for visiting the EAP. Furthermore, employees who do not want their supervisors to know of their attendance at an EAP session must arrange the appointment outside of their duty hours or request leave in accordance with Article 46, Leave, of this Agreement. Unless there is an emergency, employees should schedule the EAP session in advance.

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## **Section 25.4 Access to EAP Services**

### ***Section 25.4.1***

The Agency may grant periods of excused absence, normally up to one (1) hour per session, to an employee for participation in the EAP for problem identification, referral to an outside resource, for general employee orientation, or education activities. Additional time may be granted as necessary. Employees will be excused from duty without charge to pay or leave to meet with an EAP counselor. The Agency may verify the date and time of the EAP session.

### ***Section 25.4.2***

Employees who are referred to community services for treatment will need to request leave in accordance with the Article 46, Leave, of this Agreement when such treatment or services are provided during duty time.

## **Section 25.5 Confidentiality of the Program Section**

### ***Section 25.5.1***

The Parties recognize that all confidential information and records concerning an employee's counseling and treatment through the EAP will be maintained in accordance with The Privacy Act of 1974.

### ***Section 25.5.2***

Except as specified in Section 25.5.2(B) and (E) of this Article, the Agency may not obtain information about the substance of the employee's involvement with the EAP without an employee's specific written consent. The EAP staff will provide the employee with a written notice concerning the confidential nature of EAP records along with the conditions where information discussed in counseling may be disclosed, and inform the employee that there are three (3) types of disclosure:

1. Disclosure with consent: The employee's written consent is obtained before any information is released.
2. Disclosure without consent: This written disclosure from the EAP counselor is only permissible in a few instances, such as the following:
  - A. To medical personnel in a medical emergency;
  - B. In response to an order of a court of competent jurisdiction;
  - C. To comply with Executive Order 12564, "Drug Free Federal Workplace;"
  - D. Incidents of suspected child abuse and neglect (in some states, elder and spouse abuse) to the appropriate state and local authorities as EAP is required by law to report; and
  - E. Disclosure to appropriate individuals, such as law enforcement authorities, a representative from the servicing Employee Relations Office and persons being threatened, if the employee has committed or threatens to commit a crime that would physically harm someone (including him/herself). This can be done only if the disclosure does not identify the employee as an alcoholic or drug abuser. The Health Insurance Portability and Accountability Act (HIPAA) does not apply if an individual threatens to harm themselves or others.
3. Secondary disclosure: Any information disclosed with the employee's consent must be accompanied by a statement that prohibits further disclosure, unless the consent expressly permits further disclosure(s).

## **Section 25.6 EAP and Its Relationship to Unacceptable Performance, Disciplinary, and Adverse Action**

Disciplinary and/or performance-based actions should be based on employee conduct or performance issues. In evaluating an employee's work performance and job-related conduct, the supervisor may consider whether an employee referred to counseling is cooperating with a recommended plan of counseling. This will require the employee's written consent consistent with Section 25.5.2(1) of this Article.

If an employee receives a proposed disciplinary or adverse action, and the employee discloses to the deciding official an issue that significantly contributed to the misconduct and for which he or she is legitimately seeking the services of, or being counseled by the EAP, the Agency may consider entering into a resolution/settlement agreement placing the proposed action in abeyance while the employee undergoes treatment under terms and conditions agreed to by the Parties.

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## **ARTICLE 26. OCCUPATIONAL SAFETY, HEALTH, AND WELLNESS**

### **Section 26.1 General**

#### ***Section 26.1.1***

As a shared value by the Union and the Agency, maintaining safe and healthful work environments is necessary for the accomplishment of the Agency's mission and contributes to a high quality of life for employees. The Agency will provide and maintain conditions and places of employment that are free from recognized hazards and unhealthful working conditions, consistent with the requirements of 29 U.S.C. § 668 et seq. (the Occupational Safety and Health Act of 1970), Executive Order 12196, 29 CFR Parts 1910 and 1960, other applicable laws, rules, regulations, and health and safety codes.

#### ***Section 26.1.2***

The Parties recognize that the Agency may seek the Secretary of Labor's approval for alternative and supplementary standards.

#### ***Section 26.1.3***

The Agency may adopt health and safety standards that are more stringent to address specific concerns on a case-by-case basis.

#### ***Section 26.1.4 Changes to Safety Program***

Where there is a statutory duty to bargain the impact of any changes to the Agency's Safety Program, the Agency will provide written notice and an opportunity to bargain to the Union consistent with the procedures in Article 16, Midterm-Bargaining.

#### ***Section 26.1.5***

In circumstances where there is no legal/regulatory safety or health standard, the Agency will use nationally recognized sources of health and safety criteria.

#### ***Section 26.1.6***

Employees shall not be subject to restraint, interference, coercion, discrimination, or reprisal by the Agency or the Union for filing or choosing not to file a report of an unsafe or unhealthful working condition, or for participating or not participating in a voluntary safety and health program or committee activity.

### **Section 26.2 Health Services**

Employee wellness and the investment in programs to maintain employee health contribute directly to sustained productivity and reduction of lost employee time due to illness. In accordance with 5 U.S.C. § 7901, Health Service Programs promote and maintain physical and mental fitness and help prevent illness and disease. The Agency may provide health education and intervention programs on a variety of subjects such as weight control, stress management, diet and nutrition, smoking cessation, health screenings, and exercise.

To the extent provided by law, the Agency may offer the following services:

1. Blood pressure measurement.
2. Pulse screening.
3. Respirations measurement.
4. Glucose reading.
5. Oxygen saturation.
6. Eye testing.
7. Hearing screens.
8. The Agency's qualified medical staff may administer treatment/medication prescribed in writing by an employee's personal physician during working hours.
9. The Agency will offer health screenings annually at no cost to the employee.

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10. Mobile mammogram/breast examination vendor (annually).
  11. Provide private room for lactation with seating, a working surface and an electrical outlet, and a small refrigerator.

### **Section 26.3 Visit to the Onsite Health Unit**

Where the employee's facility has an on-site occupational Health Unit, please refer to Article 46, Leave, Section 46.17 Visit to the Onsite Health Unit.

### **Section 26.4 Local Facility Safety Committees**

The principal mission of the Local Facility Safety and Health Committee is to assist the development and implementation of the Agency's Occupational Safety and Health Program.

1. The Agency agrees to maintain local facility safety committees as follows:
  - HQ and Jeffersonville a minimum of six (6) members (three (3) appointed by the Agency, and three (3) appointed by the Union).
  - Tucson Contact Center (TCC) and Denver Regional Office (DNRO) a minimum of four (4) members (two (2) appointed by the Agency and two (2) appointed by the Union).

Each Safety Committee will meet at mutually agreeable times and places, normally no less than quarterly. At their initial meeting, the Safety Committee will establish operational ground rules necessary to carry out their mission.

Each Committee shall have equal representation. The position of Committee Chair will alternate at the beginning of each calendar year between Union and Agency members, with existing committee Chair rotations remaining unchanged. When new local facility safety committees are established, the Agency will hold the Chair position and the Parties will rotate the Chair position each year thereafter beginning on January 1.

The Committee Chair will be responsible for scheduling the meetings for Committee members at a mutually agreeable time.

2. Union representatives will receive official time to attend Local Facility Safety Committee meetings in accordance with Article 10, Official Time.
3. Written minutes of each meeting will be maintained and distributed to each Committee member and made available to employees via electronic messages and/or posting on appropriate health and safety bulletin board.
4. In accordance with applicable laws, rules, regulations, and this Agreement, the Agency will make available to the Committee existing Agency information that is relevant and necessary to the duties of the Committee.

The information should include but is not limited to the following: Agency's safety and health policies/programs, accident, injury, and illness data, epidemiological data, Safety Data Sheet (SDS), inspection reports, abatement plans, and internal and external evaluation reports.

5. In accordance with 29 CFR § 1960.59(b), the Agency will provide Union representatives occupational safety and health training(s), including both introductory and specialized courses and materials, which will enable Union representatives to function appropriately in ensuring safe and healthful working conditions and practices in the workplace, and enable them to effectively assist in conducting workplace safety and health inspections.
6. Duties of the established Committee will follow 29 CFR 1960.40(b) to include, but are not limited to the following:
  - A. Monitor the safety and health program and make appropriate recommendations to the Safety Officer;
  - B. Monitor the findings and reports of workplace inspections;
  - C. When requested by the Safety Officer or Safety Committee, participate in periodic inspections to monitor inspection procedures, and comment on supplementary standards proposed by the Agency;
  - D. Review internal and external evaluation reports and make recommendations concerning the safety and health program;
  - E. Monitor plans for abating safety and health hazards;
  - F. Review responses to reports concerned with allegations of hazardous conditions, alleged safety and health program deficiencies, and allegations of discrimination due to participation in the Occupational Safety and Health Administration (OSHA) program. If at least half of the members of record on the Committee are not



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substantially satisfied with the response, they may report their dissatisfaction to OSHA or request an appropriate investigation by OSHA;

- G. Review procedures for handling safety and health suggestions and recommendations from employees;
- H. Review reports of unsafe and unhealthful conditions where the hazard has been disputed; and
- I. Review the Agency's response(s) to reports of hazardous conditions or program deficiencies identified by the OSHA.

#### ***Section 26.4.1***

Union appointed members of Facility Safety Committees will be given copies of all Safety Officer letters and OSHA Notices of Violation received by the Agency. The Agency will provide written copies within five (5) days of the safety violation(s).

#### ***Section 26.4.2***

The Parties acknowledge that Union participation in Safety Committees is not to be construed as a waiver of the Union's right to collective bargaining.

### **Section 26.5 Personal Protective Equipment**

#### ***Section 26.5.1***

The Agency will comply with federal regulations in regard to Personal Protective Equipment (PPE), as required by appropriate federal and/or state government (or its subdivisions) standards, to protect employees from hazardous conditions, encountered during the performance of their official duties. PPE will be provided at no cost to employees required to wear PPE.

#### ***Section 26.5.2***

Assessments to determine the need for PPE will be conducted by the Agency in each workplace. These assessments will also evaluate the need for and the feasibility of engineering controls or other devices designed to reduce workplace injuries and illnesses, or to eliminate the need for PPE. The Union will be notified before any assessments take place. Upon request and in accordance with Article 6, Union Rights, Section 6.8, Right to Information, the Union will be given copies of all assessments, including findings, conclusions, decisions, and all documents, data, and materials used as a basis for the decision.

#### ***Section 26.5.3***

Protective devices may include, but are not limited to, safety glasses and/or safety goggles that will fit safely and firmly over prescription eyeglasses, safety-toed shoes/boots, earplugs, respirators, safety aprons, foul weather clothing, and protective gloves. Employees will be trained to use safety equipment, PPE, and other devices provided.

Employees must adhere to procedures directed by the Agency for their protection and the protection of their colleagues. Employees must maintain PPE cleanliness, inspect equipment before each use, and report defective equipment to their supervisor. Employees who fail to use prescribed safety equipment and/or protective devices may be subject to disciplinary action.

#### ***Section 26.5.4***

Situations requiring employees to wear respirators for safety will include a process for fit testing.

### **Section 26.6 Unsafe/Unhealthful Conditions**

#### ***Section 26.6.1***

OSHA requires employees to comply with all safety and health standards that apply to their actions on the job. Employees should follow the Agency's safety and health rules, wear or use all required gear and equipment, follow safe work practices, and report hazardous conditions to a supervisor or safety representatives.

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**Section 26.6.2**

Any employee, group of employees, or Union representative of employees who believes that an unsafe or unhealthful working condition exists in any worksite should first report such condition to any Agency supervisor, manager, executive, or safety official. An employee may also report unsafe or unhealthful working conditions to the Safety Committee and/or the Union. Employees making these reports may request to remain anonymous.

Inspections will be conducted within twenty-four (24) hours for employee reports of imminent danger conditions, within three (3) working days for potentially serious conditions, and within twenty (20) working days for other than serious safety and health conditions, under 29 CFR § 1960.28(d)(3). However, an inspection may not be necessary if the hazardous condition(s) can be abated immediately through normal management action, and with prompt notification to Union, employees, and the Safety Committee.

**Section 26.6.3**

When the Agency or other appropriate authority determines that a dangerous or potentially dangerous condition exists at a worksite, employees at that worksite will be notified as soon as practicable so that precautionary steps can be taken.

**Section 26.6.4**

The Agency shall post a notice of hazardous conditions discovered in worksites as required by applicable laws, rules, and regulations. The notice shall be posted at or near the location of the hazard and shall remain posted until the cited condition has been corrected. Such notices shall contain a warning and description of the unsafe or unhealthful condition and any required precautions to the full extent required by applicable laws, rules, and regulations.

Simultaneously with the posting, the Agency shall deliver copies of the notice to the Union and the appropriate facility Safety Committee(s).

**Section 26.6.5**

The appropriate Facility Safety Committee will evaluate employee reports of unsafe or unhealthful working conditions in accordance with 29 CFR § 1960.28. The Union President or designee(s) will receive a formal written notice of all serious hazards as defined in 29 CFR § 1960.2(v).

**Section 26.6.6**

The Agency shall promptly abate any unsafe and unhealthful working condition. Toward this end, any equipment, devices, structures, clothing, supplies, tools, or instruments that are found to be unsafe will be removed from service, locked-out, tagged-out, or rendered inoperative as appropriate.

**Section 26.6.7**

If there is an unsafe or unhealthy situation in a worksite, the paramount concern is for the preservation of safety and health. Should it become necessary to evacuate an area, the Agency shall take precautions to guarantee the safety and health of employees.

Employees ordinarily will not be readmitted to an evacuated area until it is determined, in conjunction with expert resources, if necessary, that there is no longer danger to the evacuated personnel. "Expert resources" may include, but are not limited to, local police departments, the Federal Protective Service, local fire departments, appropriate health authorities, etc. The Union will be notified as soon as possible regarding the emergency situation.

**Section 26.6.8**

An abatement plan will be prepared if the abatement of an unsafe or unhealthy working condition will not be possible within thirty (30) days. Such plan shall contain an explanation of the circumstances of the delay in abatement, a proposed timetable for the abatement, and a summary of steps being taken in the interim to protect employees from being injured as a result of the unsafe or unhealthy working conditions. Copies of the plan will be provided to the Safety Committees and the Local Union President.

**Section 26.6.9**

The Safety Committees will be timely notified regarding the development and implementation of abatement plans for their respective facility and all personnel subject to the hazard shall be advised of interim measures in effect and shall be kept informed of subsequent progress on the abatement plan.

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**Section 26.6.10**

If the abatement plan cannot be immediately implemented, the Agency shall inform affected employees of the interim measures that will be instituted for the protection of the employees as soon as possible.

**Section 26.6.11**

If adequate interim measures cannot be implemented, employees will be assigned work in a safe and healthy area. If an alternate work area is not available or appropriate, as determined by the Agency, will make a decision to close the facility/facilities, employees may be assigned to telework if feasible, or will be excused with pay and without charge to leave until the condition is corrected. Employees already on leave are not eligible.

Nonleave-earning employees who are dismissed from duty due to unsafe or unhealthy working conditions will be paid for the time remaining on their shift.

**Section 26.6.12**

The Agency will comply with confined-space entry requirements in accordance with applicable federal regulations.

**Section 26.6.13**

Employees who are required to operate specialty vehicles, e.g., tractor trailers, all-terrain vehicles, forklifts, etc., shall receive training at the Agency's expense on the safe and proper operation of the vehicles.

**Section 26.6.14**

The Parties will actively support employees' safe operation of government vehicles and personal vehicles used for government business, including the following:

1. Consistent use of seat belts and shoulder harnesses;
2. Refraining from texting or using electronic devices while driving; and
3. Obeying applicable traffic laws.

**Section 26.6.15**

If an employee is required to have in their possession a commercial driver's license, the employee shall be responsible for maintaining this license including training, physicals, etc. Any associated or subsequent costs for training or physicals will be covered by the Agency.

**Section 26.6.16**

Prior to developing or changing local cold or heat related contingency plans, the Agency will offer a pre-decisional opportunity to the Local Union President, or designee, to present the Union's views. These plans shall be developed at the local level.

**Section 26.6.17**

The Agency shall review the health and safety concerns related to any chemical application that may affect employee exposures in the workplace and comply with the Hazard Communication Standard under 29 CFR §1910.1200 et seq. There will be no application of insecticides, carpet glue, HVAC cleaning agents, paint, or other like construction or potentially hazardous chemicals during work hours in enclosed spaces while occupied by employees.

Normally, whenever insecticides or pesticides are used in large scale in government-owned space, the Union and employees will be notified at least five (5) days in advance (unless the situation calls for quicker action), whether the application is indoors or out, and during work hours or not.

In government-leased space, the Agency will notify the Union, after it becomes aware, that insecticides or pesticides are to be used. RAs will be considered for employees with special health considerations consistent with Article 54, Reasonable Accommodations.

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## **Section 26.7 Imminent Danger Situations and Imminent Risk Situations**

### ***Section 26.7.1***

An employee may decline his or her assigned task because of reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is an insufficient time to seek effective redress through normal hazard reporting and abatement procedures. The employee must notify the supervisor as soon as possible.

### ***Section 26.7.2***

If an employee reports an unsafe or unhealthful working condition through the normal reporting procedure and the Agency determine that imminent danger exists, the Agency will undertake abatement and the withdrawal of exposed employees who are not necessary for abatement.

Employees not needed for abatement will follow instructions given to them. The appropriate Union President or designee will be informed as soon as possible.

## **Section 26.8 Safety Training**

### ***Section 26.8.1***

As determined by the Agency, employees will be provided with appropriate orientation and/or training to perform their jobs safely. Such training shall include instructions in proper work methods to be used and proper use of required PPE. The Agency should provide appropriate safety and health training for employees as necessary.

## **Section 26.9 Hazardous Duty Pay**

### ***Section 26.9.1***

It is Agency policy to eliminate or minimize hazards and physical hardships. When such situations cannot be practically eliminated, appropriate environmental differentials will be paid to employees exposed to such situations as provided by 5 U.S.C. § 5545(d) for General Schedule (GS) employees and 5 U.S.C. § 5343(c)(4) for Wage Grade (WG) employees.

When the Union believes that an employee may be entitled to environmental differential pay, it will notify the Agency of the employee's name, title, duty location, and the nature of the hazard.

## **Section 26.10 Hazardous Materials**

The Agency will maintain a current list of all hazardous materials in each location and will maintain paper copies of current Safety Data Sheet (SDS) in each workplace where such materials are used or stored. The Agency shall comply with all aspects of 29 CFR § 1910.1200.

All employees determined to be exposed to hazardous chemicals and materials at work will be informed of their exposure to each hazard, the amount of exposure, the level of safe exposure (if there is a standard), and the risks associated with the hazardous chemicals and materials to which they were exposed. Exposures will be documented in the employees' medical records.

## **Section 26.11 Safety Inspections**

A designated Union representative and a representative from the Safety Committee may accompany the safety inspector during occupational safety and health inspections of the Agency's workplaces. Designated representatives shall be authorized normal duty time to participate in such inspections. Inspections are different than routine walk-throughs or follow-ups to tickets (e.g., salt application, floors are not wet, etc...). They will not be delayed due to the unavailability of the Union and/or Safety Committee designee.

## **Section 26.12 Safe Working Environment**

The Agency agrees to provide employees with appropriate orientation, training, furniture, and equipment necessary to perform their duties in a safe and healthful manner. Training may include instruction in ergonomics, proper work methods to be used, and/or proper use of equipment and furniture. The Parties agree to review and discuss on a regular basis the need to update training and to replace furniture and equipment as necessary. Employees who have a need for special

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health/safety training or accommodation should make that need known to their supervisor and/or the Reasonable Accommodation Branch, as applicable.

The Agency will maintain all equipment in a safe manner. The Agency will apply applicable laws, rules, regulations, or directives when developing procurement specifications for computers, video display terminals, printers, ergonomic furniture and chairs, and accessories such as glare filters, footrests, wrist rests, document holders, telephone headsets, replacement ear pads and microphone windscreen covers for telephone headsets, and lockers. In areas where such equipment is being furnished as of the effective date of this Agreement, the Agency will continue to provide the equipment (as approved by the Agency). In an effort to maintain a healthy and productive work environment, the Agency will observe the following:

1. Adequate lighting: In work areas controlled by the Agency, overhead lighting levels will be within the ranges required by applicable laws, rules, regulations, or directives. In an effort to reduce excessive glare, windows shall be fitted with blinds or drapes where possible;
2. Ergonomically adaptable and situated keyboards and video screens;
3. Ergonomically conducive chairs and desks; and
4. Isolation/mitigation of excessively noisy equipment.

Subject to the availability of the equipment and funds, the Agency will timely consider devices to improve comfort and reduce repetitive strain.

Employees requesting a special desk, chair, or other equipment because of documented health-related reasons should contact the appropriate servicing Health Unit or Safety Office to request an ergonomic assessment, or may follow procedures as covered in Article 54, Reasonable Accommodations.

### **Section 26.13 Temperature Conditions**

The Parties recognize that temperature conditions in and around work areas can have a direct bearing on employees' health.

The Parties agree that the problem of temperature extremes, either hot or cold, and appropriate measures to reduce the risk of exposed employees are appropriate matters for referral to the local Health and Safety Representative(s).

Workplace temperatures will be maintained at levels appropriate to the nature of the workplace and the type of work being performed in accordance with the CFR, Title 41, Cooling and Heating Energy Conservation Policies and Procedures.

In situations where indoor temperature is too hot or too cold, the Agency will take appropriate steps to remedy the situation as soon as possible. If the situation cannot be remedied within a reasonable period of time, the Agency may consider other appropriate remedial action such as alternate workstations, telework, or will excuse employees with pay and without charge to leave until the condition is corrected. Employees already on leave are not eligible. Nonleave-earning employees dismissed from duty due to unsafe or unhealthy working conditions will be paid for the time remaining on their shift.

### **Section 26.14 Work in Confined Spaces or Remote Areas**

#### ***Section 26.14.1***

When an employee is required to work in confined spaces or other areas or environments that present a known hazard likely to cause imminent serious physical harm, a second employee will be assigned to work there.

#### ***Section 26.14.2***

When employees work in remote areas/buildings, periodic checks shall be made by supervisors, their employees, or security personnel, as determined by the Agency.

#### ***Section 26.14.3***

When work is required to be performed in areas where flammable or other harmful vapors exist, all such areas will be maintained so that vapor levels remain within acceptable safety parameters as determined by OSHA safety standards.

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## **Section 26.15 Field Federal Safety and Health Councils**

The Agency will consider requests for a Union representative and Local Facility Safety Committee members, in accordance with 29 CFR 1960.84. If approved, they may participate in activities and attend meetings of Field Federal Safety and Health Councils in the local area without loss of pay or charge to leave, provided that no additional overtime or premium pay will be allowed for such participation.

## **Section 26.16 Agency Safety and Health Records**

The Agency agrees to compile and maintain records required by the OSHA and the Agency's Occupational Safety and Health Program. All requests by the Union for information will be filed in accordance with Article 6, Union Rights, Section 6.8, Right to Information. The Agency will make available copies of the records to the Union unless prohibited by law.

## **Section 26.17 On-the-Job Injury, Illness, or Death**

### ***Section 26.17.1***

In the event of an on-the-job death of an employee, the Agency will notify the Union of the name of the employee.

### ***Section 26.17.2***

In the event of an occupationally related on-the-job injury or illness, the Agency will assist the employee in completing appropriate worker's compensation forms in accordance with Article 27, Workers' Compensation. The employee may also seek Union assistance in completing the forms.

### ***Section 26.17.3***

The Union will be promptly notified of any serious on-the job injuries. Such notification will be consistent with any requirements pertaining to employee privacy.

## **Section 26.18 Personal Security**

### ***Section 26.18.1***

The Agency shall provide adequate security to all employees.

### ***Section 26.18.2***

Employees faced with physically threatening situations will receive appropriate assistance from the Agency.

### ***Section 26.18.3***

When the Agency becomes aware by any employee, as a result of the performance of official duties, that an employee has been subjected to a hostile work environment, alleged threats, harassment, or other conduct leading to a reasonable fear for his/her safety and/or the employee's family, the Agency shall discuss the matter with the employee and take appropriate action in accordance with the Agency's policies on workplace violence and/or harassment.

## **Section 26.19 Emergency Preparedness**

Each post of duty (POD) for Agency employees shall have an Occupant Emergency Plan that establishes procedures for safeguarding lives in the event of fire, earthquake, bomb threat, tornado, flood, hurricane, terrorist attack, biological threat, chemical threat, hostage-taking, nuclear explosions, and radiological contamination, or similar natural or man-made emergency.

## **Section 26.20 Indoor Air Quality**

### ***Section 26.20.1***

Employees are entitled to work in an environment containing safe and healthy indoor air quality. The Agency shall provide safe and healthful indoor air quality by conforming to laws, guidelines, regulations, and/or policies issued by federal regulatory agencies such as OSHA, Environmental Protection Agency, and Government Services Administration (GSA).

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**Section 26.20.2**

On-site investigations/inspections will be conducted when a problem concerning indoor air quality or building-related illness is formally brought to the Agency's attention. These investigations/ inspections shall meet the criteria of the GSA and the protocols of OSHA.

The Agency may require an employee to submit medical documentation from a healthcare provider needed to properly investigate a complaint of building-related illness.

Any documentation will be maintained in strict confidence by the Agency.

**Section 26.20.3**

The Agency will comply with all applicable engineering standards in the maintenance of ventilation efficiency.

**Section 26.21 Leased Space**

The local Union and impacted employees will be notified in accordance with the requirements at 29 CFR 1960.30 and 1960.34.

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## ARTICLE 27. WORKERS COMPENSATION

### Section 27.1 Responsibilities

#### Section 27.1.1

The Department of Labor (DOL), Office of Workers' Compensation Programs (OWCP) administers disability compensation benefits for civilian employees in accordance with the Federal Employees' Compensation Act (FECA) (Chapter 81 of 5 U.S.C.). The Act prescribes civilian employee compensation benefits for disability arising from personal injury or disease sustained while in the performance of duty.

The Act and OWCP procedures under 20 CFR Part 10 also provide for job retention rights, long term disability situations, and the payment of benefits to dependents if a work-related injury or disease causes an employee's death. The Act and OWCP procedures further set forth responsibilities for both the employing agency and for employees.

In order for an employee to qualify for benefits, it must be established that injury, illness, or death was directly related to employment, or that a prior injury or illness was accelerated or aggravated in the course of employment. However, employees cannot receive disability compensation benefits if the injury or death is due to willful misconduct, intention to bring about injury or death to oneself or another, or if intoxication is the proximate cause of the injury.

#### Section 27.1.2

1. The Agency agrees that when an employee sustains an injury or an alleged acquired illness or exposure in the performance of duties and reports it to the Agency, the supervisor and/or the appropriate Agency official will inform the affected employee of his/her rights and responsibilities under the FECA. These rights and responsibilities include the following:
  - A. The employee's right to file for compensation benefits;
  - B. The types of benefits available;
  - C. The written procedure for filing claims at each station or workplace;
  - D. The option to use compensation benefits, if approved, in lieu of sick or annual leave; and
  - E. The option to use Continuation of Pay (COP) for traumatic injuries in lieu of sick, annual leave, or LWOP.
  - F. The employee is responsible for submitting or arranging for submittal of a medical report from the attending physician to the DOC's workers' compensation contractor or other appropriate office. For wage loss benefits, the employee must also submit medical evidence showing that the condition claimed is disabling and detail any specific work restriction.
  - G. If medical evidence from the treating physician shows that the employee is not totally disabled, the Agency may provide a written offer of a suitable alternative position or the employee's usual position with modifications.
  - H. If the employee refuses a written offer of a suitable alternative position by the Agency, COP will be terminated. If OWCP later determines that the position was not suitable, OWCP will direct the Agency to grant the employee COP retroactive to the termination date.
2. If an employee believes the Agency has mishandled the employee's Workers' Compensation claim, the employee may contact OWCP to register a complaint.

### Section 27.2 Procedure for Filing Claims for Workers' Compensation Benefits

1. As soon as possible after experiencing a job-related injury or illness, the employee should contact his/her supervisor and seek first aid.
2. The Agency shall provide the employee instructions for electronically filing claims or other documents through OWCP's Employee's Compensation Operations and Management Portal (ECOMP) system. In accordance with OWCP requirements, employees will also be provided copies of appropriate forms. Principal OWCP forms are as follows:
  - A. CA-1 is the appropriate form for reporting a traumatic injury. A traumatic injury is a wound or other condition of the body caused by external force, including stress or strain. The injury must be identifiable by time and place of occurrence and member of the body affected; it must be caused by a specific event or incident, or a series of events or incidents within a single day or work shift. A traumatic injury also includes damage to or destruction of prosthetic devices or appliances.



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- B. CA-2 is the appropriate form for reporting an occupational disease or illness. An occupational disease is defined as a condition produced in the work environment over a period longer than one workday or shift. It may result from systemic infections, repeated stress or strain, exposure to toxins, poisons, or fumes, or other continuing conditions of the work.
- C. CA-2A is the appropriate form for recording a recurrence of disability. A recurrence of disability is defined as a spontaneous return or increase of disability due to a previous injury or occupational disease without intervening cause, or a return or increase of disability due to a consequential injury.
- D. CA-16 authorizes a physician to provide an initial examination and/or treatment to an employee who has experienced an on-the-job injury. An employee has the initial right to select a physician of his/her choice to provide necessary treatment. The physician must be listed by name on the CA-16. The term 'physician' includes doctors of medicine, surgeons, osteopathic practitioners, podiatrists, dentists, clinical psychologists, optometrists, and chiropractors within specific limits as defined by 5 U.S.C. § 8101(3) and CFR § 10.311.
- Whenever possible, the treating physician will be provided a CA-16 (Authorization for Examination and/or Treatment) within four (4) hours after requesting the CA-16. When that is not possible, the Agency may authorize medical treatment by telephone and send the completed form to the medical facility within forty-eight (48) hours. The Agency will provide the employee with information about accessing DOL's online medical provider search tool and will assist the employee in obtaining the list. The fact that a provider is listed in no way constitutes an endorsement of the provider or the provider's services by the Agency.
- E. CA-17 is one of several forms used to report the duty status of the employee. The supervisor must fill out the left-hand portion of the form describing the physical requirements of the position. The physician or practitioner completes the right-hand portion of CA-17, Duty Status Report to provide information such as the date the employee can return to work or any specific restrictions on work the employee will be able to perform.
- F. CA-7 is the form used to claim compensation (wage loss) when the employee cannot return to work after COP ends, or when the employee is not entitled to receive COP and claims compensation for wage loss. CA-7 is filed in occupational exposure or recurrence cases. In injury cases where COP is controverted, form CA-7 may be submitted with form CA-1. CA-7 is also used to claim a schedule award for permanent impairment as a result of traumatic injury or occupational illness/disease.
- G. CA-20 is a Medical Report Form. The CA-20 may be filed when a CA-16 is not issued by the Agency, or along with a CA-7. The Agency will provide form CA-20 to the employee as often as needed.
- H. The Agency and the employee may each submit additional documentation as needed, including the employee's Position Description (PD), witness statements, or other pertinent information.
3. The appropriate sections of these forms should be filled out by the employee thru the ECOMP application and forwarded to the Workers' Compensation Specialist of record through ECOMP as soon as possible, no later than thirty (30) days from the date of the injury or illness. If the employee is incapacitated, this action may be taken by someone acting on behalf of the employee. Supervisory action on CA-1 and CA-2 forms shall be completed within ten (10) working days after the employee completes his/her portion of the form. For all forms, the Agency must complete the appropriate parts of the form(s) and transmit them to the DOL, OWCP within the time limits set out by the DOL.
4. The Agency will release employee medical records only in accordance with the FECA and OWCP procedures under 20 CFR Part 10.
- The Agency will not request that an employee release the employee's medical records or other PII, except to the extent required to adjudicate the employee's claim. Administratively acceptable medical documentation as detailed in Article 46, Leave, Section 46.5.5 may also be required to substantiate that an absence is related to the claim. This release will be specific to the injury/illness claimed.
- It is the employee's responsibility to keep his/her immediate supervisor and OWCP fully informed of his/her ability to return to any type of work, of any medical restrictions/limitations imposed by the treating medical provider, as well as any changes in his/her return-to-work status. If in doubt as to the documentation required, the employee and/or supervisor may contact the Agency's Workers' Compensation staff.
5. All records relating to claims for benefits filed under FECA are covered by the government-wide Privacy Act system of records (DOL/Govt) and 20 CFR § 10.11.

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6. An employee may designate a representative in writing in accordance with OWCP regulations. If the representative is a federal employee, he or she must be a recognized Union official, or an immediate family member, as defined by 20 CFR §10.701(a) and (b).

### **Section 27.3 Posting of Employee Rights**

The Agency agrees to post information advising employees of the procedures for filing Workers' Compensation claims. The notice will include, at a minimum, HR office telephone numbers and/or the Agency OWCP specialist's office telephone number for obtaining information/assistance relevant to Workers' Compensation claims.

### **Section 27.4 Election of Benefits Options**

1. Under OWCP regulations, three (3) years from date of traumatic injury or three (3) years from the employee's first awareness of an occupational illness is the time limit for initially filing an OWCP claim.
2. It is to the employee's advantage to file a claim immediately after becoming aware of a medical condition that was caused by work.
3. DOL, OWCP (not the Agency) decides if an employee has a compensable injury and the benefits he/she is entitled to under FECA.
4. An employee with a job-related traumatic injury/illness or occupational disease may elect to be placed on sick or annual leave instead of LWOP. It is the employee's responsibility to provide medical documentation to support this claim. If the employee's claim is approved, the employee shall have the option of buying back any leave used and having it reinstated to the employee's account in accordance with DAO 202-810, Workers' Compensation for Federal Employees.
5. An employee with a job-related traumatic injury may elect to receive up to forty-five (45) days of COP if the claim is filed within thirty (30) days of the injury. The employee is responsible to ensure that medical evidence supporting disability resulting from the claimed traumatic injury, including a statement as to specific work limitations, is provided to the Agency within ten (10) days after filing the claim for COP. The entitlement to COP is not available to employees who file an occupational disease/illness claim.
6. If the employee's request for COP is disallowed by the DOL, OWCP, any of the forty-five (45) days of COP that were previously granted may be converted to sick leave, annual leave, and/or LWOP as appropriate. The employee shall be responsible for advising the Agency as to which form of leave is/are requested and for completing an SF-71, Application for Leave, or its electronic equivalent.

### **Section 27.5 Placement of Workers' Compensation Claimants**

1. When an employee requests and supports his/her request with appropriate medical information, the Agency will make a serious effort to assign the employee, on a temporary basis, to duties consistent with the employee's medical needs, pending resolution of his/her claim.
2. Where the employee requests and supports his/her request with an approved OWCP claim and appropriate medical information, the Agency will take prompt action regarding all job-related injuries or illnesses so that the employee receives the appropriate benefits expeditiously and is returned to duty as soon as possible. The employee will be informed about his/her rights and responsibilities related to job-incurred illnesses or injuries.
3. The employee will be provided assignments consistent with his/her qualifications and medical limitations. These assignments must be in writing and may include reduced hours or changing the employee's scheduled tour of duty. Whenever possible, a limited-duty reassignment will be without reduction in pay within the employee's current series or another series where the employee is qualified to perform the duties assigned.
4. An employee who suffers a reduction in pay due to a temporary or permanent disability is eligible to claim compensation from OWCP for the difference between their new wages and their wages on the date of injury.

### **Section 27.6 Permanent Disability**

#### ***Section 27.6.1 Disability Retirement Counseling***

Employees who are prevented from performing the full range of duties of their position due to a disability are encouraged to seek counseling from an Agency benefits counselor concerning their eligibility for a disability retirement. The Agency will not include any information in a written job offer regarding the election of Office of Personnel Management benefits.

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## ARTICLE 28. DISCIPLINARY AND ADVERSE ACTIONS

### Section 28.1 Statement of Purpose and Policy

#### Section 28.1.1

The objective of discipline is to correct and improve employee behavior. This Article does not apply to performance-based actions taken under 5 U.S.C. § 4303.

#### Section 28.1.2

The concept of progressive discipline, which is designed primarily to correct and improve employee behavior, will guide managers in making decisions regarding discipline. Discipline generally should be preceded by counseling or oral warnings that are informal in nature.

However, nothing in this provision interferes with management's right to choose a specific penalty to impose in a disciplinary action if a lesser form of discipline/adverse action would not be appropriate. Counseling and warnings will be conducted privately and in such a manner as to avoid embarrassment to the employee. All bargaining unit employees will be subject to disciplinary or adverse action only for just cause.

#### Section 28.1.3

The Agency will administer disciplinary and adverse action procedures and determine appropriate penalties to all employees in a fair, equitable, and consistent manner, dependent upon the individual circumstances of the case. The deciding official will always be different from the official who proposed a disciplinary or adverse action. Normally the deciding official will be at a higher level of management than the proposing official.

#### Section 28.1.4

Upon request, the employee and/or their representative will be provided the information that was used in preparing and issuing a disciplinary or adverse action.

### Section 28.2 Definitions

The following definitions are used for the purposes of this Article:

1. Adverse action for purposes of this Article consists of either removal, suspension for more than fourteen (14) days, reduction in grade or pay, or furlough without pay for thirty (30) days or less.
2. Alternative discipline provides a choice or an alternative to traditional discipline, usually when the traditional penalty would be less than removal and there has been an admission of misconduct.
3. Disciplinary action for purposes of this Article consists of either a written reprimand or a suspension for fourteen (14) days or less.
4. Indefinite suspension means placing an employee in a temporary status without duties and pay pending investigation, inquiry, or further Agency action. The indefinite suspension continues for an indeterminate period of time. It ends with the occurrence of the pending conditions set forth in the notice of action, which may include the completion of any subsequent administrative action.
5. Investigative leave means leave without loss of or reduction in pay; leave to which an employee is otherwise entitled under law, or credit for time or service which is not authorized under any other provision of law; and in which an employee who is the subject of an investigation is placed.
6. Notice leave means leave without loss of or reduction in pay; leave to which an employee is otherwise entitled under law, or credit for time or service, which is not authorized under any other provision of law; and in which an employee who is in a notice period is placed. In accordance with 5 U.S.C. § 6329b, "notice period" means a period beginning on the date on which an employee is provided notice required under law of a proposed adverse action against the employee and ending on the date on which an agency may take the adverse action.
7. Progressive discipline is the process of using increasingly severe steps or measures when an employee fails to correct behavior.
8. Removal is an involuntary separation from federal service.
9. Suspension means placing an employee (for disciplinary reasons) in a temporary status without duties and pay.

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## **Section 28.3 Inquiries**

### ***Section 28.3.1***

Prior to issuing any proposed disciplinary or adverse action, the Agency will conduct an inquiry as appropriate to the alleged offense to determine whether any action is warranted.

### ***Section 28.3.2***

Disciplinary inquiries will be conducted fairly and impartially, and reasonable effort will be made to reconcile conflicting information. The Union shall be given the opportunity to be represented at any examination (i.e., investigative questioning) of an employee by a representative of the Agency in connection with an investigation if the employee reasonably believes that the questioning may result in disciplinary action against the employee and the employee requests representation.

## **Section 28.4 Timeliness of Discipline**

If the Agency believes that disciplinary or adverse action is necessary, such action will be initiated in a timely manner.

## **Section 28.5 Alternative Discipline**

The Parties agree that alternative discipline may, under the right circumstances, be a more efficient and effective approach than traditional discipline. As such, supervisors are encouraged to discuss the possibility of using alternative forms of discipline with their servicing HR office when contemplating taking and/or deciding upon disciplinary actions. The Parties may consider and/or propose an alternative form of discipline at any stage during the disciplinary process. If the Agency and the employee and/or his/her representative come to an agreement on an alternative form of discipline, the terms of the alternative discipline will be set forth in a signed resolution/settlement agreement.

## **Section 28.6 Reprimand**

### ***Section 28.6.1***

If appropriate discipline is found to be a written reprimand, a letter of reprimand will be issued, and a copy placed in the employee's electronic Official Personnel Folder (eOPF) for two (2) years. Records of written reprimand may be removed from the eOPF after one (1) year upon written request by the employee to the servicing Employee Relations Area.

### ***Section 28.6.2***

The letter of reprimand will inform the employee of his/her rights under the negotiated grievance procedure.

### ***Section 28.6.3***

In consideration of an appropriate penalty, written reprimands older than two (2) years will not be considered as prior offenses in progressive discipline.

## **Section 28.7 Suspensions of Fourteen (14) Days or Less**

In the case of a proposed suspension for fourteen (14) days or less, an employee is entitled to the following:

1. An advance written notice stating the specific reasons for the proposed action;
2. Ten (10) business days to respond orally and/or in writing, and to furnish affidavits and other documentary evidence in support of the response;
3. Representation by an attorney or other representative, designated in writing;
4. If already in a duty status, a reasonable amount of duty time to prepare and present an oral and/or written response to the proposal; and
5. After considering the employee's response, if any, a written decision containing the specific reasons for the action.

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## **Section 28.8 Removal, Suspension for More Than Fourteen (14) Days, Reduction-in-Grade, Reduction-in-Pay, or Furlough of Thirty (30) Days or Less**

### **Section 28.8.1**

In the case of a proposed suspension for more than fourteen (14) days, removal, or reduction-in grade or pay, an employee is entitled to the following:

1. Advance written notice of thirty (30) days stating the specific reasons for the proposed action;
2. Ten (10) business days to respond orally and/or in writing, and to furnish affidavits and other documentary evidence in support of the response;
3. Representation by an attorney or other representative, designated in writing;
4. If already in a duty status, a reasonable amount of duty time to prepare and present a response to the proposal; and
5. After considering the employee's response, if any, a written decision containing the specific reasons for the action.

## **Section 28.9 Additional Charges**

If the Agency wishes to add additional charges between the time it proposes disciplinary/adverse action and when a decision is issued, the Agency will rescind the original proposal and issue a new proposal, including the new charges, thus restarting the process over.

## **Section 28.10 Crime Provision**

The Agency may provide a notice period shorter than what is provided for under this Article when the Agency has reasonable cause to believe that the employee has committed a crime where a sentence of imprisonment may be imposed, and the Agency is proposing a removal or a suspension, including an indefinite suspension.

## **Section 28.11 Investigative Leave or Notice Leave**

When the circumstances require that the employee be banned from the worksite and/or prevented from being in a duty status during an investigation or a proposed notice period, the Agency may place the employee on investigative leave or notice leave, respectively, as is necessary.

Investigative or notice leave will be carried out in accordance with 5 U.S.C. § 6329b.

## **Section 28.12 Requests for Time Extensions on Proposals**

The Agency will not deny a reasonable request for extension of the time to respond to proposals.

## **Section 28.13 Medical Condition**

An employee who wishes consideration of any medical condition shall be given a reasonable amount of time to furnish medical documentation as defined in 5 CFR § 339.104.

## **Section 28.14 Off-Duty Misconduct**

In cases where a disciplinary or adverse action is proposed for reasons of off-duty misconduct, the Agency's written notification provided for in Sections 28.7 and 28.8 of this Article will address the relationship (nexus) between the off-duty misconduct and the efficiency of the service in accordance with applicable law.

## **Section 28.15 Agency Decision**

### **Section 28.15.1**

In arriving at its written decision on any proposed disciplinary or adverse action, the Agency shall not consider any reasons for action other than those specified in the notice of proposed action. It shall consider any answer that the employee and/or his or her representative made to a designated official, any medical documentation furnished, and all the information gathered in any investigation.

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The Agency shall also consider appropriate and relevant mitigating and aggravating factors, such as those enumerated by the MSPB in *Curtis Douglas, et al. vs. Veterans Administration*, 5 MSPR 280 (1981). If the imposed penalty is less severe than proposed, the decision will address the reasons the penalty was mitigated.

#### ***Section 28.15.2***

If the decision is to effect an action specified in Sections 28.7 or 28.8 of this Article, it will specify the reason the action is being taken, the action to be taken, the effective date of that action, and the employee's appeal rights regarding the decision.

#### ***Section 28.15.3***

If the employee does not have a designated representative, a second copy of the decision letter labeled "Optional Copy for Representative" and any associated attachments will be provided to the employee. A copy of the decision letter and any attachments will be provided directly to the representative in cases where the employee has designated a representative in writing.

### **Section 28.16 Appeal Rights**

#### ***Section 28.16.1***

A decision to take an action specified in Sections 28.6, 28.7, and 28.8 of this Article may be grieved under Article 12, Negotiated Grievance Procedure.

#### ***Section 28.16.2***

The employee may appeal the decision to take an action addressed in Section 28.8 of this Article either to the MSPB or under the provisions of Article 12, Negotiated Grievance Procedure, but not both. The decision letter will specify the time frame by which an appeal to MSPB must be filed, have an attached appropriate appeal form, and a copy of the MSPB's regulations regarding appeals of adverse actions.

#### ***Section 28.16.3***

The choice of the appeal forum is irrevocable. An employee shall be deemed to have exercised his/her option at such time as the employee timely initiates an appeal to the MSPB, or timely files a written grievance, whichever occurs first.

### **Section 28.17 Last Chance Agreements**

#### ***Section 28.17.1***

"Last Chance Agreements" refer to situations where the Agency agrees to forego issuing a decision on a proposed disciplinary or adverse action against an employee in exchange for the employee agreeing to conform to certain conduct expectations for a set period of time. If the employee does not meet his or her obligation under the agreement, then the Agency is free to reinstate the disciplinary or adverse action originally proposed.

#### ***Section 28.17.2***

Prior to offering an employee a "Last Chance Agreement," the Union will be notified and given an opportunity to be present at any meeting where the employee is offered such an agreement.

### **Section 28.18 Notice to Union**

On an annual basis, upon request from the Union, the Agency will provide a report of actions taken involving bargaining unit employees according to Sections 28.7 and 28.8 of this Article.

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## DOUGLAS FACTORS

The Merit Systems Protection Board in its landmark decision, *Douglas vs. Veterans Administration*, 5 M.S.P.R. 280 (1981), established criteria that supervisors must consider in determining an appropriate penalty to impose for an act of employee misconduct.

### The Douglas Factors

The following relevant factors must be considered in determining the severity of the discipline:

- (1) 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 or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- (2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- (3) the employee's past disciplinary record;
- (4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- (5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's work ability to perform assigned duties;
- (6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- (7) consistency of the penalty with any applicable agency table of penalties;
- (8) the notoriety of the offense or its impact upon the reputation of the agency;
- (9) 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;
- (10) the potential for the employee's rehabilitation;
- (11) 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
- (12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

THIS IS NOT AN ALL INCLUSIVE LIST!!!!!!



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## ARTICLE 29. UNIFORMS

### Section 29.1 General Provisions

The Agency determines the categories of employees that require the wearing of uniforms in the performance of their duties, as well as basic uniform requirements. In accordance with 5 CFR 591 Subpart A, the Agency agrees to provide an allowance to the employees or furnish uniforms at no cost to the employee. A uniform is defined as a specified article or articles of clothing that may include, but is not limited to, such items as shoes, boots, hats, shirts, slacks, skirts, or outerwear an employee is required by an agency to wear to provide a distinctive and easily identifiable appearance in performing his or her job.

A “uniform” does not include protective equipment required for the employee’s safety under 5 U.S.C. § 7903 or normal business or work attire purchased at the discretion of the employee.

Examples of covered positions include, but are not limited to, Nurses, Motor Vehicle Operators, Material Handlers, and Laborers and/or any other position that the agency requires uniforms.

### Section 29.2 Uniform Allowance

1. In accordance with 5 CFR 591.103, a uniform allowance of \$650 will be paid annually (i.e., every calendar year) in a lump sum payment to employees the Agency deems are eligible for a uniform allowance, normally within 30 days of the effective date of appointment, and at the beginning of the calendar year, no later than the pay date for pay period 3, in subsequent years. This allowance will be used for the purchase, maintenance, and repair of uniforms, including appropriate shoes as defined by the Agency pursuant to 5 CFR 591.102, unless safety shoes are required as PPE under Article 26, Occupational Safety, Health, and Wellness.
2. Employees shall be provided the prescribed uniform requirements in writing normally within 30-days of the effective date of appointment.
3. Employees must provide receipts to their supervisor, or other individual designated by the Agency, for the purchase of uniforms, as well as receipts for the maintenance and/or repair costs of the uniforms, within 30 days of when the expense was incurred by the employee.

Employees are always required to provide receipts for the purchase of uniforms.

To the extent an employee asserts that a receipt is not reasonably obtainable for the maintenance and/or repair of a uniform (i.e. lost/misplaced, no mechanism for receipt, etc.), the employee will provide a log to their supervisor, or other individual designated by the Agency, detailing the expense. The log will include the reason for inability to provide a receipt, date/time of purchase, name and location of vendor, description of specific item(s), unit price, quantity, manufacturer, type of maintenance/repair, costs of service(s) provided, and a signed self-certified, sworn statement from the employee attesting to the accuracy of the information contained in the log.

The signed log must be provided to the Agency within 30 days of when the expense was incurred by the employee, and upon receipt, the Agency will review and determine whether it is acceptable.

4. Any unused uniform allowance, if applicable, may be recovered by the Agency, at its discretion after written notification to the employee, including the amount to be recovered, normally at least one (1) pay period in advance from recovery.

### Section 29.3 Furnishing Uniforms

In accordance with 5 CFR 591.103, if the Agency intends to transition from issuing uniform allowances to providing uniforms, notification pursuant to Article 2, Section 2.3, Reopener and Article 16, Mid-Term Bargaining will be provided to the Union. After all bargaining obligations are met, a contract will be announced, awarded, and established with a vendor that will provide applicable uniforms that do not exceed the government-wide maximum uniform allowance rate, as specified in 5 CFR § 591.103.

The vendor will provide new and/or replacement uniforms, as needed, including appropriate shoes, unless safety shoes are required in accordance with Article 26, Occupational Safety, Health, and Wellness, Section 26.6, Personal Protective Equipment (PPE).



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The uniforms will be furnished to all employees occupying covered positions within 30 days of the effective date of their assignment.

1. All uniforms and required supplemental clothing will be provided to employees who are required to wear them.
  - A. When using a commercial uniform service, the service will include furnishing, maintaining/repairing, and cleaning uniforms.
  - B. Employees who are required to wear uniforms will be provided shirts, pants or shorts, and a jacket for employees who are required to work outside. Initially, employees will be provided a sufficient number of uniforms to sustain employment for two (2) weeks.
  - C. If required, supplemental clothing, may include, but is not limited to, rubber boots, rain gear, coveralls, and heavy outerwear.
  - D. Uniforms are the property of the contractor and must be returned to the Agency when the employee leaves the position.
2. Where PPE, including safety shoes, is required under applicable regulations, Article 26 and this Article, the agency will be responsible for providing that equipment at no cost to the employee. Additional replacement needs of safety shoes and/or equipment will be determined on a case-by-case basis.
3. If an employee is required to wear a prescribed uniform in accordance with 5 CFR § 591.102, the employee must wear the full uniform in the performance of duties.
4. Employees will not be subject to any negative action as a result of failure to comply with the uniform policy due to circumstances outside the employee's control, such as when the uniform service fails to deliver uniforms in the proper size, proper condition, or in a timely manner.
5. The required uniform may be supplemented with additional clothing during cold/inclement weather in accordance with Article 31, Dress Code.

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## **ARTICLE 30. PARKING**

### **Section 30.1**

Where there is government-controlled parking, employees at Headquarters or the National Processing Center shall be provided free parking in the Agency's controlled lots or parking garages for the life of this Agreement. If there is to be a change in any of the provisions of this Article, the Agency must provide the Union with notification of the proposed change in accordance with Article 16, Mid-Term Bargaining.

The Agency will continue to provide free parking consistent with current lease agreements at nongovernment-controlled facilities.

### **Section 30.2**

Where there is government-controlled parking, properly marked, handicap spaces will be provided in accordance with applicable law and regulation.

### **Section 30.3**

The Agency will provide reserved spaces for use by the Union as set forth in Section 30.4. Upon notice from the Union, the Agency will notify owners of unauthorized vehicles using these spaces that they must move their vehicles. Appropriate action may be taken if the vehicles are not promptly removed.

### **Section 30.4 Allocations of Controlled Parking Spaces to the Union**

HQ—The Agency will provide three (3) designated parking spaces in front of or within close proximity to the HQ building.

Jeffersonville—The Agency will provide two (2) reserved parking spaces located within close proximity of the Union office.

Tucson—The Agency will provide one (1) reserved parking space.

The Parties will reassess the number of designated spaces annually.

### **Section 30.5 Parking Assignments and Allocations**

The Agency will assign available parking spaces according to 41 CFR § Part 102-74.

The Agency will periodically review allocated parking assignments and modify as necessary. Remaining spaces will constitute general parking spaces and are utilized on a first-come, first-serve basis except for spaces assigned by the appropriate office staff. A list of reserved parking spaces will be furnished to the Union.

### **Section 30.6 Security**

All Agency locations covered by this Agreement will provide safe and secure parking areas that comply with all federal regulations governing the security of parking areas.

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## ARTICLE 31. DRESS CODE

1. As representatives of the federal government, employees are expected to maintain a neat, clean, business-like appearance while working at a physical location and/or working remotely while on camera. Clothing must be appropriate, as defined in Section 2 below, to conduct government business.
2. Acceptable and Consistent Dress:
  - A. Appropriate shirts, blouses, slacks, trousers, jeans, and dress shorts, skirts, and dresses of suitable length must be worn in all work areas consistent with the work being done and the work environment.
  - B. Appropriate footwear consistent with the work being performed and the work environment should be worn in the work areas at all times.
  - C. All manner of dress must be safe, dignified, and shall avoid anything that tends to result in criticism or creates controversy among employees.
3. Notice of Inappropriate Dress:

The following kinds of apparel/manner of dress (though not all-inclusive) are not business-like, nor appropriate and are prohibited:

  - A. "See-through" shirts, blouses, jerseys, or similar garments without appropriate undergarments.
  - B. Pajamas, or other nightwear.
  - C. Halter tops, tube tops, midriff tops, muscle shirts, swim wear, and other abbreviated and/or revealing attire.
  - D. Cut-offs, short-shorts, jogging shorts, athletic workout shorts/pants, and other abbreviated and/or revealing attire.
  - E. Any garment with excessive holes, wrinkles, stains, dirt, or is cut-off, ripped, or frayed.
  - F. Any garment with slogans, pictures, or language that may be offensive, profane, obscene, sexually suggestive, or advocate the use of alcohol, drugs, or unlawful conduct.
  - G. Any garment that displays partisan political messages.
  - H. Beach/shower footwear.
4. Should a supervisor or employee have questions regarding consistency and/or appropriateness of dress, he/she should consult with their servicing Employee Relations Office.

In all cases, the supervisor shall inform an employee if his/her attire is unacceptable for the work area. The employee will be given an opportunity to request annual leave, LWOP, or take other suitable steps to conform to this policy. Employees who dress inappropriately may be subject to counseling or administrative action. Supervisors are to enforce this policy consistently and equitably.

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## **ARTICLE 32. TRAINING**

### **Section 32.1 General Provisions**

The Agency and the Union agree that the training and development of employees are of critical importance in carrying out the mission of the Agency. In recognition of this, the Agency will provide training and career development opportunities to employees of the bargaining unit, as appropriate. The Agency is responsible for ensuring that all employees receive the training necessary for the performance of their assigned duties. Employee training and development will be administered in accordance with all applicable laws and regulations, including 5 U.S.C. § 4101, 4109, 4121, 5542 and 5544, 5 CFR parts 410-412 and 551.401, 422-423, and the provisions of this Agreement.

### **Section 32.2 Training Costs**

#### ***Section 32.2.1***

The Agency will pay all expenses, including tuition and travel, in connection with the training required by the Agency to perform the duties of an employee's current position or a position to which an employee has been assigned.

#### ***Section 32.2.2***

The Agency may also pay reasonable expenses for approved work-related training that may:

1. Improve an employee's ability to perform his/her current job or a job the employee has been selected to fill through merit promotion.
2. Increase an employee's knowledge or skills in connection with career growth or future advancement opportunities.

#### ***Section 32.2.3***

If attendance is approved, the Agency may pay employees' expenses for attending conferences and meetings authorized by 5 U.S.C. § 4110 when the criteria of 5 CFR part 410 are met.

#### ***Section 32.2.4***

To the extent the Agency has established (or establishes in the future) a condition of employment that employees must be members of particular professional societies or organizations, the Agency will reimburse employees for their dues, subject to the availability of funds and as authorized by applicable laws, regulations, and departmental policies.

#### ***Section 32.2.5***

Training is subject to funding availability and supervisory approval. When resources for the training are limited, approval for training funds will be based on fair criteria that are equitably applied. Upon request, the Union will be provided with information regarding resources for training in accordance with Article 6, Union Rights, Section 6.8, Right to Information.

### **Section 32.3 Training Programs**

The Agency will notify employees of the availability of training or developmental programs, the general description of the program, the criteria for approval, and the nomination or application procedures. Programs may include, but are not limited to the following:

1. Job-related courses directly related to the employees' current job duties or to skills that employees may need in the future to perform the job.
2. Leadership development programs: provide participants with the common knowledge and skills to compete for future leadership positions.
3. Management trainee programs: designed for creating future managers through developmental course work and rotational assignments.
4. E-learning: Internet-based learning tool covering a wide range of educational, developmental, and workplace specific topics.
5. Brown bag/lunch and learn: lunchtime forums to educate and/or inform employees on a variety of topics using in-house or external resources, such as local colleges or universities.

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6. Tuition assistance: payment for specific college courses in areas of study identified by the Agency and taken from an accredited college.

### **Section 32.4 Career Development**

An Individual Development Plan (IDP) is a flexible document jointly and voluntarily developed between the supervisor, or other Agency-designated management official, and the employee to be used as a roadmap for the employee's professional and career development. The primary emphasis of the plans will be as follows:

1. To address the competencies (or knowledge, skills, and abilities) needed by the employee in his/her current position;
2. To help prepare employees for new career opportunities; and
3. To address the competencies needed to compete for advancement beyond his/her current promotion potential.

Each plan shall establish objectives and identify the responsibilities of each Party in striving to realize the goals. IDPs should be aligned with the overall mission of the Agency and/or individual operating unit.

#### **Section 32.4.1**

Each employee will be entitled to establish an IDP to guide his or her career development. Upon request, the supervisor or other Agency designated management official will assist the employee in the preparation of the IDP and will review it with the employee to ensure that the plan conforms to organizational and individual career needs. Employees may seek assistance from career counselors, IDP coordinators, employee development specialists, and others who may provide advice and assistance in the preparation of the plan.

#### **Section 32.4.2**

Employees will not be penalized in any manner, including during the performance evaluation process, for not completing an IDP.

### **Section 32.5 Specific Contact Center Training**

#### **Section 32.5.1**

All telephone interviewers will have the opportunity to sign up for project/survey training. When training becomes available for a project/survey, a sign-up sheet will be posted and maintained for volunteers.

The Agency reserves the right to determine the employees selected for training.

#### **Section 32.5.2**

A notice regarding sign-up sheets will be emailed, posted on electronic messaging systems and official bulletin boards. The sign-up sheet will be located in a common area of the facility convenient for all employees.

Normally, training opportunity sign-up sheets will be posted no less than ten (10) days prior to the training date. The Agency will attempt to contact employees on leave or who are unscheduled to notify them of training opportunities.

#### **Section 32.5.3**

Trainee selections will be based on employee schedule preferences, availability, current work needs, sponsor requirements, rating of record of level three or greater, employee qualification skills, and seating capacity. If the number of eligible volunteers exceeds the number of training slots available, the decision will be based on Entrance on Duty (EOD), with the most senior being selected first.

To the extent practicable, opportunities for training for projects/surveys will first be made available for current employees who meet the criteria for that opportunity.

#### **Section 32.5.4**

Survey refresher training will take place as needed and with approval of the sponsor. Survey specific, as well as refresher training will normally be conducted during nonpeak work cycles. In addition, the most current training materials will be made readily available to all employees.

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**Section 32.5.5**

Make-up training opportunities will be offered within thirty (30) days of the initial opportunity and in the same format as the initial training. Where this is not possible, make-up training information may be provided in an alternate electronic or hard copy format with provisions for completion certification.

**Section 32.5.6**

When employees complete training opportunities for a specific project/survey, the Agency will consider utilizing those employees on that project within a reasonable amount of time.

**Section 32.5.7**

The Agency agrees to consider an employee's request to decline selection for a training opportunity. This does not preclude the employee from receiving the same or other offers of training.

**Section 32.5.8**

Records related to training will be made available to the Union, upon request, in accordance with Article 6, Union Rights, Section 6.8, Right to Information.

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## ARTICLE 33. PERFORMANCE MANAGEMENT SYSTEM

### Section 33.1 Overview

#### *Section 33.1.1 Purpose*

Performance Management is the systematic process where the Agency involves its employees, as individuals and members of a group, in improving organizational effectiveness in the accomplishment of the Agency's mission and goals per 5 CFR §430.102 (a).

#### *Section 33.1.2 Legal Requirements and Authority*

This Article implements provisions of 5 CFR 430, 5 U.S.C. Chapter 43, Department Administrative Order (DAO) 202-430, and other applicable laws, rules, and regulations.

#### *Section 33.1.3 Training and Information*

The Agency is responsible for communicating the purpose and procedures of the General Workforce Performance Management System by establishing appropriate training and orientation programs. These programs must emphasize performance plan development, supervisory and management responsibility for carrying out the program, and the linkage between ratings, employee recognition, and other personnel decisions. The Agency agrees to provide information on the General Workforce Performance Management System to employees.

### Section 33.2 Definitions for the General Workforce Performance Management System

**Acceptable Performance** is performance that meets the acceptable level of performance for the Department's 5-level rating scale.

**Agency** ("The Employer") is the U.S. Census Bureau.

**Appraisal** is the act or process of evaluating the performance of an employee against the prescribed performance standard(s).

**Appraisal Cycle** is a one (1) year period established by the Agency's Performance Management System, where an employee's performance will normally be reviewed.

**Approving Official** is normally the supervisor who assigns, controls, and is responsible for the work of the rating official, usually the rating official's immediate supervisor. However, operating units or departmental offices 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 approving the final rating.

**Critical Element** is a component of an employee's position consisting of one (1) or more duties and responsibilities that contribute toward accomplishing the Agency's organizational goals and objectives, which are of such importance that unacceptable performance on the element would result in unacceptable performance in the position.

**Generic Performance Standards** are performance standards that can be applied to all employees covered by a 5-level Performance Management System.

**Interim Rating** is a rating that should be prepared during the course of an appraisal cycle when an employee has spent the minimum appraisal period, of one hundred twenty (120) days in a covered position and then changes to another position. This may happen more than once during the appraisal cycle.

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

**Meritorious Step Increase** is an increase in a foreign service employee's rate of basic pay from one (1) step of his/her position to the next higher of the grade. Only an employee who receives a rating of record at Level (5) or equivalent is eligible.

**Minimum Appraisal Period** is the minimum length of time an employee must perform under a performance plan prior to being appraised. The minimum appraisal period is one hundred twenty (120) days.

**Opportunity to Demonstrate Acceptable Performance** is a reasonable time period within which an employee, whose performance has been determined to be at Level 1 in one (1) or more critical elements has an opportunity to demonstrate performance at a Level 2 or above.

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**Performance** is an employee's accomplishment of assigned work as specified in the critical elements and as measured against the standards of the employee's position.

**Performance Award** is a one-time cash payment to recognize the contributions of an employee and is based on the rating of record. A performance award does not increase base pay.

**Performance Improvement Plan (PIP)** is developed for an employee at any point in the appraisal cycle when performance becomes Level 1 (unacceptable) in one (1) or more critical elements. A PIP affords an employee the opportunity to demonstrate acceptable performance, and it is developed with specific guidance provided by a Servicing Human Resources Office (SHRO).

**Performance Management** is the integrated process where the Agency involves its employees in improving the Agency's organizational effectiveness in the accomplishment of its mission and strategic goals. Performance Management consists of performance planning, monitoring employee performance, employee development, evaluating employee performance, and recognition.

**Performance Plans** are the documentation of performance expectations communicated to employees from supervisors. Performance plans define the critical elements and the performance standards by which an employee's performance will be evaluated. The performance plan is documented on the electronic CD-430, Performance Management Record (PMR).

**Performance Standards** are statements of the expectations or requirements established by management for a 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, although not mandatory, which may be requested by an employee prior to the formal appraisal meeting with the rating official. During this meeting, the employee may do the following:

- A. Present an assessment of his/her performance during the appraisal cycle;
- B. Cover aspects of his/her work of which the rating official may not be aware; and
- C. Identify what he or she would like to include in the next cycle's performance plan.

**Progress Review** is a formal feedback session where the rating official and employee discuss the employee's progress toward meeting the elements in his/her performance plan, the need for any changes to the performance plan, and any performance deficiencies the supervisor has noted.

**Quality Step Increase** is an increase in the GS employee's rate of basic pay from one (1) step of his/her position to the next higher step of the grade. Only an employee who receives a rating of record at Level 5 is eligible.

**Rating** is the written record of the appraisal of the employee's performance in each critical element and the assignment of a summary rating level.

**Rating Official** is the person responsible for informing the employee of the critical elements of his/her position, establishing performance standards, providing feedback, appraising performance, and recommending the rating. Normally, this is the employee's immediate supervisor.

**Required Critical Performance Elements** are performance elements that apply to all employees in an organization based on their position-specific duties. Customer Service is a required critical element for all employees.

**Summary Rating (or Rating of Record)** is the overall rating for the most recent appraisal cycle. The summary rating of record is established by combining the individual ratings of each critical element to arrive at an overall evaluation of an employee's performance for an appraisal cycle.

**Supplemental Performance Standards** are used to define performance in terms of results (e.g., what is to be accomplished) and the process (e.g., how it is to be accomplished). Supplemental standards are expressed in terms of quality, quantity, timeliness, cost effectiveness, or other relevant measures, rather than tasks or specific duties.

**Unacceptable Performance** is performance that fails to meet the established performance standards in one or more critical elements of an employee's position. It is referred to as a Level 1 rating on the Agency's 5-level rating scale.

**Within-Grade Increase (WGI)** is a periodic increase in an employee's rate of basic pay from one (1) step of the grade of his/her position to the next step of that grade.



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### **Section 33.3 Objectives**

The Agency's General Workforce Performance Management System serves as the basis for the following:

1. Establishing critical elements and related performance standards for each covered position to the maximum extent feasible, permits the accurate evaluation of job performance on the basis of objective criteria related to the position;
2. Using performance plans to communicate the Agency's strategic organizational goals and objectives as they relate to the actual work of individuals; reinforce individual accountability for meeting the work requirements of the Agency; and track and evaluate individual performance results and organizational performance results;
3. Using performance appraisal results as a basis for providing information to employees on their performance and how it may be improved; and other personnel management actions including training, rewarding, reassigning, promoting, reducing in grade, retaining, granting within-grade increases, and removing employees; and
4. Evaluating and improving individual and organizational accomplishments.

### **Section 33.4 Coverage**

1. The Performance Management System applies to all employees covered by this Agreement.
2. Coverage is determined for employees who are on a detail by the position of record. Performance on the detail may be evaluated and included in the summary rating if a performance plan for the detail was established and the employee served under the performance plan and the detail lasted for at least as long as the minimum appraisal period, in accordance with Section 33.7 of this Article. Otherwise, feedback from the detail manager or supervisor will be obtained and considered by the position of record rating official in conducting progress reviews and final appraisals. The Agency's approved Performance Feedback Form should be utilized and is available electronically.

General workforce employees whose service is temporarily interrupted by service in any federally sponsored program (e.g., Intergovernmental Personnel Act/IPA) that calls for the employee's return to the same or like position continues to be covered by the General Workforce Performance Management System while on the federally sponsored assignment.

### **Section 33.5 Responsibilities of Management Officials**

Specific roles and responsibilities as determined by the Agency for the SHRO, Management officials, Rating officials and Approving officials can be located within DAO 202-430 and the Performance Management Handbook.

Violations of DAO 202-430 and this Agreement are grievable unless otherwise excluded by Article 12, Negotiated Grievance Procedure, or by law, rule, or regulation.

#### **Section 33.5.1**

The Head of the U.S. Census Bureau, DOC, or his/her designee will:

1. Ensure that the operating unit instructions on the Performance Management System are consistent with current laws, applicable OPM rules and regulations, Departmental policies, and this Agreement;
2. Ensure managers and supervisors will be provided with training and guidance covering their duties and responsibilities;
3. Ensure that covered employees are informed of their rights and responsibilities under the Performance Management System;
4. Ensure managers and supervisors will be provided with clear instructions on procedures for developing performance plans;
5. Communicate, in writing, the Agency's overall missions, objectives, organizational strategic goals, and plans to all levels within the organization, and ensure alignment of individual performance plans with the Agency's organizational goals, as they relate to the actual work of the Agency;
6. Ensure the opportunity exists for employee participation in the development of performance plans;
7. Ensure that performance appraisal results are used by managers and supervisors in making personnel decisions regarding training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees;
8. Ensure managers and supervisors meet appraisal deadlines and responsibilities;

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9. Encourage employee recognition to reward and motivate employees;
  10. Monitor and evaluate the effectiveness of the program and take corrective action as warranted; and
  11. Ensure the maintenance of appropriate records and submit required data and reports on the operation of the Performance Management System.

***Section 33.5.2 Approving Officials will:***

1. Review elements and standards in place in their organizations to ensure that they are integrated into the total management process and are consistent with overall organizational objectives;
2. Review, approve, sign and date performance plans, prior to the rating official, when developed to ensure equity and consistency within their organizations;
3. Resolve conflicts between rating officials and employees over the content of performance plans;
4. Review performance plans and final ratings to ensure that evaluation criteria are objective and job-related and that actual accomplishments or deficiencies identified by the rating official support the rating, including documenting reasons for changing ratings;
5. Review, approve, and sign and date the final summary rating page prior to the rating official; and
6. Approve or recommend performance-related personnel actions, including awards.

***Section 33.5.3 Rating Officials (Supervisors) of General Workforce Employees will:***

1. Inform employees of the Agency 's mission and organizational strategic goals, plans, and activities of the work unit and inform employees of their duties and responsibilities;
2. Encourage employee participation in developing performance plans;
3. Confer with approving officials about the content of the performance plan and get their approval with signature and date, prior to the rating official signing and presentation of the final plan to employees for their signature;
4. Annotate "Employee Refused to Sign", when and where applicable, in the employee signature block of the performance plan and sign and date the notation;
5. Provide employees with written performance plans that identify the critical elements and performance standards related to their specific duties, responsibilities, and expected levels of performance and obtain employee's electronic signature and date;
6. Collect data and information, and engage in ongoing dialogue with employees in an effort to ensure performance plan requirements are being met;
7. Conduct and document at least two (2) formal progress reviews (normally in February and June) during the appraisal period; conduct additional reviews as needed, and provide written feedback to employees;
8. Modify performance plans as necessary;
9. Participate in the pre-appraisal meeting, if one is requested by the employee;
10. Complete appraisals, which include determining and evaluating employees' actual performance;
11. Document instances of unacceptable performance, such as missed deadlines or poor quality work products;
12. Confer with approving officials about their organization's performance and about the ratings they plan to assign their employees and get the approving official's approval and before discussing those ratings with employees;
13. Discuss the final appraisal with the employee during the appraisal meeting and obtain employee's electronic signature and date;
14. Sign and date performance plans, progress reviews, and performance summary ratings after the approving official;
15. Annotate "Employee Refused to Sign", when and where applicable, in the employee signature block of the performance plan and sign and date the notation;
16. Employees will have access to their final rating of record that is maintained in the electronic personnel system.
17. Recommend personnel actions (including awards), performance-based actions, and/or training based on employee performance in relation to performance standards; and

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18. Ensure performance plans are properly documented throughout the performance year and the ratings assigned to each employee are completed within thirty (30) days of the end of the appraisal cycle for transmission to the SHRO, by maintaining the automated employee record.

***Section 33.5.4 The Servicing Human Resources Office will:***

1. Communicate to all employees the purpose and procedures of the appraisal system and its relationship to overall personnel management;
2. Provide instructions to rating officials on how to develop critical elements and performance standards;
3. Ensure that critical elements are linked to organizational goals and objectives;
4. Provide managers and supervisors with periodic updates covering their duties and responsibilities under the 5-Level Performance Management System;
5. Provide training or orientation on the performance appraisal system for employees who are responsible for, or subject to, the Performance Management System;
6. Coordinate and submit required reports;
7. Monitor, evaluate, and administer the 5 -Level Performance Management System; and
8. Provide advice and technical assistance on the Performance Management System when requested or needed.

**Section 33.6 Responsibilities of General Workforce Employees**

Employees will:

1. Be provided the opportunity to participate in developing performance plans with rating officials;
2. Perform duties and responsibilities in accordance with performance plans and position descriptions;
3. Be provided an opportunity to document accomplishments against performance standards for both the progress reviews and the final appraisal;
4. Participate in a scheduled progress review(s) and request additional review(s) as necessary;
5. Participate in the performance appraisal process with the rating official (including scheduling a pre-appraisal meeting if they wish);
6. Sign and date their performance plan, progress review(s), and performance summary ratings to acknowledge receipt (If the employee refuses to sign, the rating official will document the performance plan accordingly);
7. Prepare written comments if desired; and
8. Personally identify and request developmental opportunities/training to enhance performance.

**Section 33.7 Timetable of Performance Management Activities**

1. Employees covered by this system are normally appraised annually under the following fixed appraisal cycle: October 1-September 30.
2. The minimum performance appraisal period is one hundred twenty (120) days for full time and part-time work schedules. When an adjustment to the minimum appraisal period is needed due to an employee who is in a nonpay status for part of the appraisal cycle (e.g., LWOP, intermittent work schedules, reemployed annuitants), eighty (80) workdays are used. Nonpay status can impact an employee's eligibility to receive a rating.
3. Rating officials will strive to establish and approve performance plans within thirty (30) days of the beginning of the appraisal cycle, but in no event longer than sixty (60) days from the beginning of the appraisal cycle.
4. When an employee enters a position or changes positions after the start of the annual appraisal cycle, a performance plan will be established and approved normally within thirty (30) days of the effective date of the appointment to the new position.
5. When an employee is detailed or temporarily promoted to a position within the Agency and is expected to serve in the position for one hundred twenty (120) days or longer, an approved performance plan will be established and approved within thirty (30) days from the beginning of a detail or temporary promotion, but in no event longer than sixty (60) days from the beginning of the detail or temporary promotion.

6. Interim summary ratings are required when an employee has spent the minimum appraisal period (one hundred twenty (120) days) in a covered position performing under a PMR, and then changes to another position covered by a PMR or when the employee's rating official departs their position (e.g., going on a detail expected to last for one hundred twenty (120) days or more, change in position, change/departure of supervisor) during the appraisal cycle. The interim rating must be completed within thirty (30) days of the change of position, end of the detail, temporary promotion, or change/departure of the supervisor.
7. When a covered employee has not served one hundred twenty (120) days of the appraisal cycle in his/her current position of record, the employee's interim rating (if one exists) becomes his/her final rating of record for the appraisal cycle (refer to Section 33.15.1 of this Article).
  - In this situation, when an interim rating becomes the employee's final rating of record, the employee remains covered under the current position's PMR and performance standards for the remainder of the appraisal cycle, and that PMR will close as unratable in their current position.
8. Appraisals and annual ratings of record must be completed within thirty (30) days of the end of the appraisal cycle.
9. Employees who enter a covered position after June 3, but before October 1, will not establish eligibility for a final rating of record by the last day of the appraisal cycle, September 30, as they will not have met the minimum appraisal period of one hundred twenty (120) days. The rating cycle is extended and these employees must be rated within thirty (30) days after completing the minimum appraisal period.
10. Ratings of record for employees are effective on the last day of the appraisal cycle (September 30) each year. For those employees subject to an extended rating cycle, the rating of record is effective the first day of the first pay period after the employee completes the minimum appraisal period.

### **Section 33.8 Performance Appraisal Process**

The appraisal process involves three distinct stages: performance planning, progress review, and appraisal. Unless unratable, each covered employee must receive a rating annually. The appraisal process is used to communicate the Agency's strategic organizational goals as they relate to the actual work of individuals, reinforce individual employee accountability for meeting the work requirements of the Agency, and track and evaluate individual and organizational results. In evaluating their performance, no employee will be responsible for matters beyond his/her control.

### **Section 33.9 Performance Planning**

Approximately four (4) weeks before the start of the appraisal cycle, rating officials (supervisors) and employees should begin developing written performance plans for the next appraisal cycle.

The process should involve both the rating official and the employee. Performance plans must be recorded on Form CD-430, Performance Management Record in the electronic performance management system. Performance plans must be completed and signed by the approving official, rating official, and employee at the beginning of the appraisal cycle, or appointment to a new position normally within thirty (30) days from the beginning of the appraisal cycle. Management will provide a copy of the signed performance plan to the employee.

### **Section 33.10 Performance Plans**

Performance plans must include:

1. Critical elements, which reflect the employee's major duties and responsibilities, and which are consistent with current job assignments and with the level of duties described in the employee's position description. (Noncritical elements are not permitted.) At least three and no more than five critical elements are required in the employee's performance plan.

Organizational objectives are included in performance plans by incorporating objectives, goals, program plans, work plans, or by other similar means that account for program results. Elements may be drawn from a number of sources including, mission and functional statements, position descriptions, planning documents, operating budget justifications, and affirmative action plans.

Elements must include only those aspects of the work over which the employee controls. An objective specifying the overall purpose for which the critical element is performed, along with a minimum of three (3) and no more than six (6) results of major activities that identify the work product or service to be provided, must be communicated in writing in the employee's performance plan.

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2. Weights must be assigned to each element based on its importance and significance of that task/program/project within the framework of the Agency's organizational goals as they relate to the actual work of individuals. The total weight for all critical elements must equal 100 percent, with no element weighted less than 15 percent. Assigning weights to the major activities listed under an element is not permitted.
  3. Performance standards must be used to evaluate levels of accomplishment for critical elements. The Generic Performance Standards (GPS) contained in Appendix A of the CD-430 are defined at each of the five (5) required rating levels and must be used to evaluate the performance of all employees covered by this system.

Supplemental standards will be developed for each critical element. Specific quantitative, timeliness, cost-effectiveness, and/or qualitative standards (if they apply to a particular critical element and if they will be used to evaluate an employee's performance) should be included as supplemental standards. If these standards are specified in operational manuals or other documents made available to the employee, those documents may simply be referenced in the performance plan.

Supplemental standards should define performance in terms of results of what is to be accomplished and how it is to be accomplished. (The results may already be expressed under the major activities listing. In such a case, they do not need to be repeated as standards since they are already specified for the employee.)

Supplemental standards need to be written only at Level 3 because the GPS are written at all five (5) performance levels and refer generically to different levels of quality, timeliness, quantity, and cost-effectiveness.

To the maximum extent feasible, performance standards must be based on objective, reasonable, and measurable criteria and provide a clear means of assessing whether objectives have been met.

### **Section 33.11 Resolving Disagreement of the Performance Plan**

If a rating official and covered employee disagree on the contents of the performance plan, the rating official and employee should attempt to resolve the disagreement through discussion.

Management retains the right to make the final decision regarding the contents of the performance plan. The contents of the performance plan may not be grieved unless there is a misapplication and/or violation of regulation, law, or specific portions of this Agreement.

However, the rating, which represents the application of standards and elements, can be challenged using the procedures in Section 33.16 of this Article.

### **Section 33.12 Factors in Developing Performance Plans**

When developing performance plans, the following factors should be considered:

1. Criticality/Relevance. Have appropriate critical elements been identified? Are the elements derived from the overall mission of the work unit?
2. Comprehensiveness. Does the performance plan cover all of the employee's major duties and responsibilities?
3. Clarity. Are critical elements and performance standards clearly and fully described?
4. Quantification. Can achievements be measured with the standards identified?
5. Consistency. Are performance plans for similar positions comparable in all-important aspects?

### **Section 33.13 Movement from One Covered Position to Another**

When an employee enters a covered position or is reassigned from one covered position to another after the start of the appraisal cycle, and when an employee serves on a detail of one hundred twenty (120) days or more, a performance plan must be established and approved for the employee, following the guidelines in this Article.

### **Section 33.14 Progress Reviews**

1. At a minimum, rating officials must conduct at least two (2) formal progress reviews with their employees (normally in February and June). Covered employees may also request (or rating officials may schedule) additional progress reviews.

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The progress review must include a discussion of the following:

- a. The employee's progress toward meeting the elements included in his or her performance plan and how that progress is measured against the achievement of the Agency's organizational goals as they relate to the actual work of the individual;
  - b. The identification of any performance deficiencies and recommendations on how to improve them by the rating official; and
  - c. The need for changes in the performance plan based on changes in responsibilities, and identification of developmental/training goals or objectives. A rating official must submit any recommended changes to the approving official and gain his/her approval of the change. Those changes must then be signed and dated by both officials and attached to the performance plan.
2. There must be a record of the progress review. Both the rating official and employee should sign and date the performance plan to indicate the review took place.
  3. At least one progress review should be scheduled and conducted for employees who enter covered positions after the start of the appraisal cycle or have returned from an extended period of absence. These progress reviews should be completed near the midpoint of the abbreviated appraisal cycle.
  4. When an employee's performance in one (1) or more critical elements falls below Level 3, a formal progress review meeting and deficiencies will be communicated on the progress review form (CD-430(c)) in the electronic system, to include written feedback that outlines the expectations and recommendations for improvement. In addition to the formal progress review process, a deficiency notice may be provided to the employee.

## **Section 33.15 Interim Summary Ratings**

### ***Section 33.15.1 Overview***

Interim ratings are prepared during the course of an appraisal cycle when an employee has spent the minimum appraisal period (120 days) in a covered position and then changes to another position. This may happen more than once during the rating period. These ratings must be completed within thirty (30) days of the change of position and are prepared in the same manner as a summary rating. The interim rating may become the summary rating when an employee changes positions toward the end of the rating period (i.e., where the time remaining in the appraisal cycle is less than one hundred twenty (120) days).

### ***Section 33.15.2 When an Interim Rating Should Be Completed***

1. After a detail in a covered position performing under a PMR, which lasts at least the minimum appraisal period (one hundred twenty (120) days);
2. After a temporary promotion/assignment performing under a PMR, which lasts at least the minimum appraisal period of one hundred twenty (120) days;
3. When an employee changes positions after serving at least one hundred twenty (120) days;
4. When a first-level supervisor leaves his/her position and an employee has been under a performance plan for the minimum appraisal period of one hundred twenty (120) days;
5. When an employee transfers from the Department to another federal agency after serving in a covered position that met the minimum appraisal period of one hundred twenty (120) days; or
6. After an assignment in a federally sponsored program, such as an IPA assignment.

### ***Section 33.15.3 Benefits of Interim Ratings***

1. To provide a final rating of record from a departing supervisor during the last one hundred twenty (120) days of the rating period, or to provide input from a departing supervisor to assist a new supervisor who is preparing a final rating of record;
2. To provide a final rating of record to an employee who changes positions during the last one hundred twenty (120) days of the rating period;
3. To provide a final rating of record to an employee who moves more than once during the rating period or is on a detail; and
4. To provide appropriate performance credit for work performed on a detail or temporary promotion/assignment.



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**Section 33.15.4 Consideration of Interim Ratings When Completing Final Appraisals**

An interim rating that was completed for an employee for service in another position should be considered when preparing the final summary rating for the current position of record, as applicable.

1. When an interim rating(s) and the rating for the current position are different, the current rating official must prepare a written narrative that explains/justifies the assignment of the summary rating level.
2. When an employee receives an interim rating of Level 2 or Level 1 (without further action) and then receives a Level 3 or above on a rating for another position in the same performance period, the summary rating is not reduced by the interim rating. Instead, the summary rating is assigned based solely on the individual critical element ratings for the current position.
3. When an employee receives an interim rating of Level 3 or above and then receives a rating of Level 1 for another position in the same performance period, the summary rating is not raised by the interim rating. Instead, the summary rating is assigned based solely on the individual elements for the current position.
4. When an employee has received an interim rating that is less than Level 3, but the rating for service in the current position is Level 3 or higher, the final rating cannot be less than Level 3.
5. When an employee changes positions or a rating official departs their position towards the end of the rating period (i.e., where the time remaining in the appraisal cycle is less than the minimum appraisal period), the interim rating becomes the rating of record for that appraisal period.
6. If a project is completed or the employee moves to another position after being on a plan for sixty (60) to one hundred twenty (120) days, the supervisor will provide written feedback to the rating official.

**Section 33.15.5 Transfers From Other Federal Agencies**

1. If an employee has served in a position for more than the minimum appraisal period in another federal agency, that former agency should provide an interim summary rating and forward it to the agency's employing office with the employee's electronic Official Personnel Folder (eOPF).
2. If the employee transfers to the Agency toward the end of the rating period (i.e., where the time remaining in the appraisal cycle is less than the minimum appraisal period), the employee's interim rating, prepared when he or she transferred from the former Agency, will become his/her rating of record for the appraisal period.
3. If no interim rating can be obtained from the employee's former Agency, and the employee has not been placed on a new PMR with the gaining Agency between June 4 and September 30, in accordance with Section 33.18 of this Article, the employee will be considered unratable.

**Section 33.16 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 one hundred twenty (120) days during the appraisal cycle must receive a rating of record in accordance with the following:

1. Rating officials must confer with the approving official about their organization's performance and gain approval of the ratings they recommend for their employees before discussing those ratings with employees.
2. The rating official initiates the appraisal by providing advance notice to the employee of the date and time for the formal appraisal meeting.
3. The employee may schedule a pre-appraisal meeting with the rating official to:
  - a. Present an assessment of his or her performance achieved during the appraisal cycle;
  - b. Inform the rating official of aspects of his or her work of which the rating official may not be aware; and
  - c. Identify objectives he or she would like to include in the performance plan for the next appraisal cycle. During this pre-appraisal meeting, the rating official may ask questions to clarify his or her understanding of the employee's performance.
4. Once the advance notice of the formal appraisal meeting has been given, and after any pre-appraisal meeting, the rating official (after conferring with the approving official) will prepare and discuss the rating of record and written narrative justification with the employee. This rating must be based on an assessment of the employee's performance against the standards set at the beginning of the appraisal cycle (or as modified and documented

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during a progress review) in the performance plan. Each critical element is rated and translated into a score using the following scale:

Level 5 = 5 points (the highest level of performance)

Level 4 = 4 points

Level 3 = 3 points

Level 2 = 2 points

Level 1 = 1 point (unacceptable performance)

5. Each critical element must be rated using the above five (5) level element rating scale. A narrative justification must be written to distinguish the rating level assigned and must also be sufficient to support any associated ratings-based performance award that may be granted. This narrative justification and rating level assigned will serve as an employee's written documentation clearly articulating the reason(s) the employee received the award, as applicable.

6. After each critical element has been rated, multiply the score for each element by the weight assigned to it. No fractional scores or weights may be used. Example:

Critical Element 1 is 30% of plan Rated at Level 4,  $30 \times 4 = 120$  points

Critical Element 2 is 30% of plan Rated at Level 3,  $30 \times 3 = 90$  points

Critical Element 3 is 20% of plan Rated at Level 5,  $20 \times 5 = 100$  points

Critical Element 4, is 20% of plan Rated at Level 4,  $20 \times 4 = 80$  points

TOTAL 390 points

Total the individual scores to determine the overall score. In the example above, the sum of  
 $120 + 90 + 100 + 80 = 390$

Using the ranges below, determine within what range the overall score (example 390) falls within.

Overall Score Summary Rating

470-500 points Level 5

380-469 points Level 4

290-379 points Level 3

200-289 points Level 2

100-199 points Level 1

This becomes the employee's summary rating for that performance appraisal cycle. In the example cited, the final summary rating would be a Level 4 since the score of 390 falls within the range for Level 4.

A summary rating of Level 1 must be assigned to any employee who is given a Level 1 rating on one (1) or more critical elements.

7. An interim rating that was completed for an employee for service in another position should be considered when preparing the final summary rating for the position of record. (Refer to Section 33.15.4 Consideration of Interim Ratings When Completing Final Appraisals).
8. When an employee changes positions less than one hundred twenty (120) days before the end of the appraisal cycle, the interim rating (if one was issued) becomes the rating of record for that appraisal cycle.
9. In instances where a departing rating official does not complete an interim rating, the Agency will ensure the employee receives an accurate interim rating normally within 30 days, from the appropriate designated-official.
10. If an employee has served on a detail to another federal agency for one hundred twenty (120) days or more during the appraisal cycle, or an assignment in a federally sponsored program, such as an IPA or Executive Exchange, the supervisor of record or the SHRO must make a reasonable effort to obtain an interim rating from the other Agency on the employee's performance on the detail or on assignment.
11. If the employee transfers to the Agency less than one hundred twenty (120) days before the end of the appraisal cycle, the employee's interim rating (if prepared when he or she transferred) will become his or her rating of record for the appraisal cycle. If no interim rating can be obtained from the employee's former Agency, the employee who is issued a PMR within the last one hundred twenty (120) days of the appraisal cycle will have the cycle extended until one hundred twenty (120) days has been fulfilled and will be provided with a rating of record.



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## **Section 33.17 Rating**

### ***Section 33.17.1***

The employee should sign the form CD-430(d) to indicate the appraisal meeting was held and the rating has been discussed. However, if the employee refuses to sign, the rating official will document the performance plan accordingly. A copy of the rating must be made available to the employee.

### ***Section 33.17.2 Comments***

If the employee desires to provide comments, he or she may check the appropriate box on the Performance Summary Rating page to attach comments and add it them within the electronic performance system within five (5) business days of receipt of the signed performance appraisal and rating. Employee comments do not constitute a rating reconsideration request.

### ***Section 33.17.3 Reconsideration***

If the employee disagrees with the rating and wishes to pursue the matter through the negotiated grievance procedure, he or she must first submit a written, detailed request for rating reconsideration to the rating official within five (5) business days of receipt of the signed appraisal and rating. The request must identify the critical element(s) for which the employee disagrees, provide a justification for the desired change to the critical element(s) rating, along with supporting documentation (if any). The rating official is required to consult with the Servicing Human Resources Office (SHRO) and must respond in writing to the request for reconsideration within five (5) business days unless the employee and/or the rating official requests an extension due to extenuating circumstances (i.e., leave, business travel, etc...). Rating reconsideration requests should not be added to the comments section of electronic performance system.

If the rating official recommends a change to the rating, he/she must communicate the planned changes to the approving official. If approved, the rating official will document the reason(s) for change and provide a copy to the employee. This documentation may also serve as the rating official's response to the employee's rating reconsideration. If the employee is still dissatisfied with the response, he/she may pursue it through the negotiated grievance procedure starting at the appropriate step higher than the approving official. Such grievances must be filed with the servicing LRA within ten (10) business days receipt of the written rating reconsideration decision. Grievances concerning performance ratings will be processed in accordance with the procedures contained in Article 12, Negotiated Grievance Procedure.

The rating that is given at the end of the annual appraisal cycle, or at the end of the extended appraisal cycle, becomes the employee's rating of record.

## **Section 33.18 Rating-Less Than 120 Days in a Covered Position or Unratable Determinations**

Employees who are serving in covered positions on the last day of the appraisal cycle but have not met the minimum appraisal period as of September 30 (and have not received an interim rating from a previous position), must be given a rating of record in accordance with the provisions of this Article, under an extended rating cycle, as soon as they have served the minimum period.

An employee may be unratable because of entry into a covered position during the last one hundred nineteen (119) days of the appraisal cycle; time in a nonpay status; extended absence; long-term training; service on a federally sponsored program, such as an IPA or President's Executive Exchange assignment where appraisal information is not available; the employee's supervisor leaving the Agency where no other higher-level supervisor can reasonably appraise the employee's performance; service on detail to another federal Agency where performance appraisal information is not available; or approved absence creditable under appropriate regulations.

When an employee transfers positions resulting in a new performance plan after less than one hundred twenty (120) calendar days in the previous position in the appraisal period, the employee may request that the former rating official provide an evaluation of his/or her previous performance, for consideration in their final appraisal rating.

## **Section 33.19 Performance Appraisal of a Sick or Disabled Employee**

The performance appraisal and subsequent rating of a sick or disabled employee may not be lowered in the current performance cycle because the employee has been absent from work to seek medical treatment.

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### **Section 33.20 Within-Grade Increases**

1. FWS. An employee who is otherwise eligible receives a Within Grade Increase (WGI) if his or her performance is satisfactory or above, as provided in 5 U.S.C. § 5343; i.e., the employee's most recent rating of record is Level 3 or higher.
2. GS. An employee who is otherwise eligible receives a WGI when his or her performance is at Level 3 (acceptable level of competence for WGI). This means that an employee's most recent rating is at least Level 3 and that during the period of time since that rating of record, the employee has continued to perform his or her responsibilities in a manner warranting an increase in basic pay. When an acceptable level of competence determination is not consistent with the employee's last summary rating of record or when an employee does not have a rating of record as recent as the completion of the latest performance appraisal cycle (as specified under 5 CFR Part 531), an additional and current summary rating of record must be prepared within a reasonable period of time, which becomes the summary rating of record only for purposes of granting or denying the WGI.
3. WGI Denials. Denials of WGI will be affected in accordance with the applicable regulations. Refer to Article 38 Within-Grade Increases for additional information.

### **Section 33.21 Initial Appointments**

Supervisors of employees serving a probationary or trial period of initial appointments must determine if the probationers' performance, conduct, and general traits of character warrant retention in their positions beyond the probationary or trial period.

### **Section 33.22 Rating Below Level 3**

When an employee is rated below Level (3), or when performance deficiencies are first identified, the Agency must attempt to help the employee to improve performance. Assistance may include, but is not limited to formal training, on-the-job training, counseling, and close supervision.

### **Section 33.23 Actions Based on Level 1 (Unacceptable) Performance**

1. An employee who has completed an initial probationary or trial period, and whose performance is unacceptable may be reassigned, removed, or changed to a lower grade.
2. An action based on unacceptable performance may be taken at any time, either during or at the end of the appraisal cycle, provided the requirements of Section 33.24 of this Article are met.

### **Section 33.24 Taking an Action Based on Level 1 (Unacceptable) Performance**

Before an employee may be removed or demoted for unacceptable performance under the provisions of 5 CFR Part 432, the employee is entitled to the following:

1. Be informed in writing of the critical element(s) where his or her performance is unacceptable;
2. Be assisted to improve approving his or her performance to an acceptable level; and
3. Be given the opportunity to demonstrate acceptable performance as follows:
  - a. When a supervisor is affording an employee whose work is unacceptable an opportunity to demonstrate acceptable performance, the supervisor will meet with the employee to discuss the performance. Normally it is at this meeting, that the supervisor will provide the employee with the written notification of his/her opportunity to improve through the issuance of a PIP. At the employee's request, he or she may have a Union representative present at the presentation of the PIP. The supervisor will consider any comments and/or suggestions from the employee or the employee's representative on how the employee can be assisted to improve his/ her performance.
  - b. The written notice must also inform the employee of the critical element(s) where performance is unacceptable and the performance standards required for retention. This may be done by defining a more specific set of tasks to be completed during the opportunity period with specific standards of timeliness, quantity, quality, etc. Such standards must be consistent with and not more stringent than the standards stated in the performance plan.

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- c. When the employee is notified in writing of his or her unacceptable performance, the clock starts on the reasonable time granted to demonstrate acceptable performance, unless a later date is specified in writing. A reasonable period of not less than ninety (90) calendar days under a PIP will be given for the employee to improve performance to an acceptable level.
  - d. Managers may include the following in their notices:
    1. Examples arranged by performance element of past incidents (within the applicable performance year) of unacceptable performance;
    2. Where relevant, a description of the negative consequences of the performance deficiencies;
    3. Recommended steps the employee may take, which would be expected to lead to improved performance, e.g., better work organization, time management, more thorough proofreading, more follow-up;
    4. Steps the Agency intends to take (or offer) to assist the employee to improve, e.g., to sponsor training, offer counseling or other assistance, or monitor work more closely; and
    5. A statement of the possible consequences of failure to improve within the provided reasonable period, i.e., reassignment, demotion, or removal.

In all cases, the employee will receive sufficient information, guidance, and assistance necessary to assist them in improving areas of unacceptable performance.

### **Section 33.25 Reduction in Grade or Removal Based on Level 1 (Unacceptable) Performance**

If an employee's performance was unacceptable during the opportunity period, the employee may be reassigned, reduced in grade, or removed from federal service after the completion of the opportunity period. An employee who is being reduced in grade or removed under the provisions of 5 CFR Part 432 is entitled to the following before being removed or reduced in grade:

1. A thirty (30) day advance written notice of the proposed action identifying specific instances of Level 1 (unacceptable) performance and critical element(s) on which performance is unacceptable;
2. Seven (7) days to respond to the notice orally and/or in writing and to furnish affidavits and any other documentary evidence in support of the reply;
3. To be represented; and
4. To receive a written decision specifying the reason(s) for the action taken.

### **Section 33.26 Record Keeping**

1. Performance appraisals and related documents (i.e., probationary certification, WGI determination) will be maintained in the employee's official Employee Performance Record and in accordance with provisions of the Privacy Act, Freedom of Information Act, other legislative and regulatory requirements, and negotiated agreements.
2. Performance data and electronic records must be maintained and retained in the Agency's electronic performance system for four (4) years.
3. Executed copies of ratings of record and PMRs, to include all official addendums to the record, are to be maintained within the employee's electronic performance record.
4. Performance records that are superseded, e.g., through an administrative or judicial procedure, must be destroyed in accordance with the administrative/judicial order or settlement agreement.
5. Records may be retained longer than four (4) years only for the purpose of statistical analysis. The data may not be used in any action affecting the employee when the manual record has been or should have been destroyed.
6. When an employee transfers from one Agency into another within the Department or to another federal agency, the following performance records must be transferred with the employee's eOPF:
  - a. Ratings of record; which are four (4) years old or less;
  - b. The performance plan on which the most recent rating of record is based; and
  - c. The interim rating prepared when the employee changes positions.

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7. Disclosure of performance-related information must be made available only as permitted by the Privacy Act and as required by 5 U.S.C. § 7114(b)(4).
  8. Records kept in automated systems are subject to the same requirements as outlined above.

Appraisals of Level 1 (unacceptable) performance, where a notice of proposed demotion or removal relating to the employee is issued but not effected, must be destroyed after the employee has completed one (1) year of acceptable performance following notice of the proposed removal or reduction in grade.

### **Section 33.27 Performance Awards**

All performance awards are subject to budgetary limitations and are paid at the discretion of the Agency. Performance awards, if granted, must be based on an employee's rating of record for the appraisal cycle when the award is granted. Recognizing employees with performance awards reflects the Parties' efforts to promote continuous improvement in Agency performance, motivate employees to strive for excellence, and provide high-quality public service. Performance awards are intended to ensure links are made between individual employee contributions and the enhancement of Agency performance. Supervisors and managers will strive to utilize the full range of awards programs. Performance awards must only be paid after the end of the full annual performance appraisal cycle. Criteria for eligibility if a determination is made to provide performance awards is as follows:

1. The employee must have a current summary rating and must meet the threshold performance evaluation criteria (Level 3 or above) determined by the Agency as a prerequisite to receive a performance award.
2. The employee must be employed by the Agency on the last day of the performance appraisal cycle, September 30, and be deemed eligible for a summary rating of record. Employees subject to an extended rating cycle, in accordance with Section 33.17 of this Article, are not eligible to receive a performance award.

When employees are considered for performance awards, the relative significance and impact of their contributions in achieving organizational goals and objectives will be considered. Performance awards will be processed in a timely and expeditious manner. The Agency will provide performance award recipients with written documentation that clearly articulates the specific reason(s) the employee received the award.

Employees are encouraged to document their accomplishments when completing applications for merit promotions. Significant concerns of perceived inequity and/or unfairness in the distribution of performance awards may be referred to the servicing LRA for review and/or consideration and criteria for performance awards, will be provided by the SHRO including monetary limits.

### **Section 33.28 Forced Distributions**

The Agency will not prescribe a distribution of levels nor predetermined number or percentage of ratings for employees covered by this Agreement. Each employee's performance will be judged solely against his/her performance.

### **Section 33.29 Changes to the Performance Management System**

Where there is a statutory duty to bargain the impact of any changes to the Agency's Performance Management System, the Agency will provide notice and opportunity to bargain consistent with the procedures in Article 16, Mid-Term Bargaining.

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## ARTICLE 34. DRUG TESTING

### Section 34.1 Purpose

The purpose of this Article is to comply with the requirements of the Executive Order 12564, Drug-Free Federal Workplace and Department of Commerce Drug Free Workplace Program (DOC DFWP). The Agency will notify the Union when making changes in the DFWP in accordance with Article 16, Mid-Term Bargaining.

### Section 34.2 Testing Program

The goal of the DFWP is deterrence of illegal drug use through a carefully controlled and monitored program of drug testing. The parties share an interest in ensuring that only those employees who occupy properly identified Testing Designated Positions (TDPs) be subject to random testing and that only those employees selected for properly identified TDPs be subject to applicant drug testing.

- A. Testing Designated Position (TDP) means a position that has been designated as subject to random drug testing. Examples may include positions such as Motor Vehicle Operators, and those designated as special sensitive, critical sensitive, noncritical sensitive, access to classified information, and national security positions.
  - 1. An employee occupying a TDP will receive written notice that his or her position has been determined to meet the criteria and justification for random drug testing at least 30 days before the individual is subject to unannounced random testing. The notice will include the reason for inclusion, the appeal procedure for requesting review of the designation and the name of the point of contact for questions regarding the decision. In addition, the notice will include a statement that the employee is entitled to representation if they choose to appeal their designation.
  - 2. Selection for random testing will be based on neutral criteria.
  - 3. An employee may appeal the testing designation of his or her position within 30 days following receipt of the written notice and within 30 days of any material change in the duties of the position. If new information becomes available, an employee may appeal the TDP designation within 30 days of becoming aware of the new information.
- B. Types of drug testing include but are not limited to the following:
  - 1. Random Testing. Employees occupying testing designated positions (TDP) will be subject to random selection for drug testing, and alcohol testing (applicable to commercial drivers license).
  - 2. Applicant Testing. Appointments made by the employer (including reassignments, transfer, or detail for more than 120 days) to positions with TDP designation. Applicant testing is not required for employees who currently occupy a TDP within the agency and have satisfied the requirements for entry into their current TDP.
  - 3. Accident Testing. Testing when, based upon the circumstances of the accident, the actions of the employee are reasonably suspected to have caused or contributed to an accident meeting the following criteria:
    - a. The accident results in a death or personal injury requiring immediate hospitalization; or
    - b. The accident resulted in damage to government or private property in excess of \$10,000.
  - 4. Reasonable Suspicion. Testing when there is a reasonable suspicion that the employee may be using drugs illegally or abusing alcohol on or off duty.

### Section 34.3 Specific Notification of Test

An employee selected for drug testing will be specifically informed of any impending test and informed in writing of:

- A. The reasons for ordering the drug testing and how the employee was selected for the test (random or due to the outcome of an accident as defined above, etc.).
- B. The consequences of a positive result and the consequences of a refusal to cooperate, including possible adverse action(s).
- C. That after any confirmed positive drug test there will be an opportunity to submit supplemental medical documentation to support the legitimate use of a specific drug.

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The individual notice will contain an acknowledgment line for the employee to sign. The employee's signature signifies only that he/she has received and read a copy of the notice. An employee's failure to sign the notice will not preclude testing the employee.

#### **Section 34.4 Methods and Collection Procedures for Testing**

The Agency agrees that methods and equipment used to test for illegal drug usage will conform to Health and Human Services (HHS) and DOC mandatory guidelines.

#### **Section 34.5 Duty Time and Travel for Drug Testing**

When an employee is required to take a drug test at the direction of the Agency, the employee will be in a duty status. If the test extends beyond the regular shift, the employee will receive overtime, compensatory time or be released.

When an employee is selected for random testing and is unable to transport themselves (for example, due to being in a carpool) to the collection facility, the Agency will arrange for transportation to and from the facility.

In all cases of reasonable suspicion, accident or unsafe practice, or follow-up testing, the Agency will arrange for transportation of the employee to and from the collection site.

Employees are eligible for reimbursement for travel expenses arising from a mandatory drug test in accordance with Federal Travel Regulations and other applicable laws, rules and regulations. Employees may submit requests for reimbursement for local travel to and from drug testing sites and laboratories. Requests for local travel will be submitted using the Agency's electronic travel system within the established deadlines in order to be eligible for reimbursement for local travel from the Agency.

#### **Section 34.6 Leave for Counseling or Rehabilitation**

Employees required to undergo evaluation and/or treatment pursuant to the DOC Drug Free Workplace Testing Guide and DFWP will be eligible for leave in accordance with all applicable policies and regulations.

- A. Any employee testing positive for illegal drugs or alcohol shall be referred to the Employee Assistance Program (EAP).
- B. The EAP shall be administered separately from the testing program, and the same quality of services shall be available to all employees without regard to findings of drug use.

#### **Section 34.7 Training**

The Agency is responsible for ensuring that all employees receive the training required by the DFWP and as necessary for the performance of their assigned duties in accordance with Article 32, Training, Section 32.1 General Provisions.

#### **Section 34.8 Records and Reports**

- A. Confidentiality of Test Results.

In order to comply with Public Law (PL) 100-71, July 11, 1987, Section 503(e) of the Act and the DFWP, the results of a drug test of an Agency employee may not be disclosed without the prior written consent of such employee, unless the disclosure would be:

1. To the Medical Review Officer,
2. To the EAP administrator in which the employee is receiving counseling or treatment or is otherwise participating,
3. To any supervisory or management official within the agency having authority to take adverse personnel action against such employee, and
4. Pursuant to the order of a court of competent jurisdiction or where required by United States government to defend against any challenge against any adverse personnel action.

For the purposes of this Section, management official includes management, government, security, or personnel official whose duties necessitate review of the test results in order to process adverse personnel action against the employee. Test results, with all identified information removed, shall also be made available to agency personnel including the Drug Program Coordinator, for data collection and other activities necessary to comply with Section 503(f) of the Act.

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**B. Employee Access to Records**

Any employee who is the subject of a drug test shall, upon written request, have access to any records relating to:

1. Such employee's drug test.
2. The results of any relevant certification, review, or revocation-of-certification proceedings, as referred to in Section 503(a)(1)(A)(ii)(III) of the Act.

Except of authorized by law, an applicant who is the subject to a drug test, however, shall not be entitled to this information.

**Section 34.9 Union Representation**

- A. If an employee believes his or her position should not be designated as a TDP, he/she may file an appeal with the Chief Financial Officer/Assistant Secretary for Administration (CFO/ASA) or designee for review of the designation. The CFO/ASA or designee will issue a written decision on the request. The decision of the CFO/ASA or designee is final.
- B. A grievance concerning an alleged impropriety in the drug testing process will be handled by the Parties in the same manner as any other grievance. The Parties will cooperate in attempts to resolve any dispute according to Article 12, Negotiated Grievance Procedure.
- C. Employees may designate a Union representative to be present during the drug testing process and any discussions held thereafter. Unless the collection facility prohibits such, the Union representative may enter the facility; however, they will not enter the restricted access area where the collection takes place. Unavailability of a Union representative will not delay collection. The collection facility policies and procedures will be adhered to.

**Section 34.10 Confidentiality and Safeguarding of Information**

Records, files and information pertaining to employee drug testing and test results will be handled confidentially and maintained in a secure manner. Thus, information will be released only to those officials of the agency that have a need to know and are authorized by applicable law, rule or regulation to receive such information.

Upon implementation of the CBA, the Agency agrees to provide the Union with an annual report that documents aggregate information (i.e. number of aggregate employees tested and their positions, administrative actions, random versus reasonable suspicion, etc.) regarding the DFWP in accordance with 5 U.S.C. 7114 (b)(4) and the Privacy Act. Thereafter, and upon request, the Agency agrees to provide the Union with an annual report.

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## **ARTICLE 35. MERIT PROMOTION**

The Agency will follow merit promotion procedures pursuant to 5 U.S.C. 2301, 5 CFR § 300, Employment, 330, Recruitment, Selection, and Placement (General), and 335, Promotion and Internal Placement.

Where there is a statutory duty to bargain the impact of any changes to the Agency's merit promotion program, the Agency will provide notice and an opportunity to bargain consistent with the procedures in Article 16, Mid-Term Bargaining.



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## **ARTICLE 36. DETAILS, REASSIGNMENTS, AND VOLUNTARY CHANGES**

### **Section 36.1 Details**

#### ***Section 36.1.1 Definition***

A temporary assignment of an employee to a different position or unclassified set of duties for a specified period of time with the expectation that the employee will return to his or her official position of record at the end of the assignment.

#### ***Section 36.1.2 Appropriate Use of Details***

Details shall be used to meet the temporary needs of the Agency's work requirements. Details will be driven by operational needs and may be used to help provide career development opportunities for employees. Assignments to details will be done in a fair and equitable manner. Details may be directed, solicited, or requested by an employee as appropriate. When the Agency solicits volunteers, the process defined in Section 36.1.7 of this Article applies.

#### ***Section 36.1.3 Documentation***

In most situations, details in excess of thirty (30) days will be documented and maintained in the employee's electronic Official Personnel Folder (eOPF). This will not preclude employees from updating their eOPF on such assignments with authorized officials in accordance with OPM guidelines.

#### ***Section 36.1.4***

In contemplating the detail of an employee serving as a Union Official, the Agency will consider his or her request not to be detailed when it would directly interfere with performing representational functions.

#### ***Section 36.1.5 Higher Graded Duties***

Details to higher graded positions or to positions of known promotion potential will be accomplished in accordance with 5 CFR § 335 and the procedures contained in Article 35, Merit Promotion.

#### ***Section 36.1.6 Lower Graded Duties***

Performance of lower graded duties officially assigned by the Agency shall not be the basis for a lower evaluation of the employee; nor will it adversely affect the employee's ability to compete and be considered for a position for which the employee would have been eligible had the employee not been assigned to those duties.

#### ***Section 36.1.7 Soliciting for Volunteers***

The following will apply when soliciting volunteers for details in excess of thirty (30) calendar days:

1. The Agency will determine the required qualifications, specialized skill sets, as well as the position description or unclassified set of duties to be performed. Only job-related duties will be applied under these procedures.
2. The Agency will determine the area of solicitation and the number of volunteers needed for the detail, and that may serve from a specific program area(s). Solicitations will be posted electronically and/or on unit bulletin boards, whichever is available to employees in the area.
3. Notice of solicitation will normally be for seven (7) business days to allow employees the opportunity to volunteer.
4. After solicitation, the Agency will list the volunteers in descending order of seniority. Seniority will be determined by Entrance on Duty (EOD).
5. Any matter negatively impacting the selection process and the Agency mission will be resolved by the Parties.

### **Section 36.2 Reassignments**

1. A noncompetitive reassignment is the change of an employee from one position to another without promotion or demotion and without any change in promotion potential.
2. Reassignments of employees to different positions shall be effected by the appropriate personnel action.
3. Where possible, employees reassigned at the direction of the Agency will be given three (3) business days advance notice.

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4. Reassignments involving a physical move will be subject to the provisions set forth in Article 22, Physical Relocations.
  5. Where operational need and time allows, the Agency will solicit volunteers for reassignment utilizing Section 36.1.7 (2) through (6) of this Article. However, these procedures do not apply to employee requested reassignments, Agency directed individual employee reassignments, or group reassignments where all qualified employees within a work unit are being reassigned.

#### ***Section 36.2.1***

An employee physically relocated from their usual worksite because of a directed detail or reassignment will be given written notification at least three (3) scheduled workdays in advance. If an employee establishes that as a result of the relocation his or her transportation arrangements will have to be changed, the employee will normally be given up to five (5) additional workdays to make those arrangements. If an employee is unable to report to their new location within the five (5) workday period, the employee may be permitted to use leave as appropriate.

#### ***Section 36.2.2***

When reassigned to a different position, the employee will be given a reasonable period to become proficient. If for any reason the employee wishes to return to the previous position, he/she may make a request in accordance with Section 36.3 of this Article.

#### ***Section 36.2.3***

In contemplating the reassignment of an employee serving as a Union official, the Agency will consider his/or her request not to be reassigned when the reassignment would directly interfere with performing representational functions.

#### ***Section 36.2.4***

Upon request, the Union will be provided a listing of all employees reassigned or detailed in accordance with Article 6, Union Rights, Section 6.8 Right to Information.

### **Section 36.3 Employee Initiated Voluntary Changes**

Employees may request a detail or reassignment at any time. These requests must be made in writing. Approvals of such requests are at the Agency's discretion and will be considered by the Agency balancing the needs of the employee with the Agency's program. Any changes will be processed in accordance with applicable laws, rules, regulations, and this Agreement.

### **Section 36.4 Relocation Expenses**

Employees affected by a change in duty station may be entitled to relocation expenses in accordance with applicable laws, rules, and regulations.

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## ARTICLE 37. POSITION CLASSIFICATION

### Section 37.1 General

1. The Parties agree that position descriptions (PDs) shall accurately describe the principal duties and responsibilities of the position.
2. PDs will be current, accurate, and classified to the proper occupational title, series, and grade in accordance with Chapters 51, and 53 of Title 5 U.S.C. and Office of Personnel Management (OPM) regulations.
3. The Agency will apply newly issued OPM classification and job grading standards normally within the timeframes established by OPM. Standards are available to the Union through the OPM Website. In cases where it is not available to the Union through OPM, the Agency will make it available.
4. Normally, PDs will be provided or made available to employees at the time of assignment, but not later than thirty (30) days after assignment.
5. The phrase "other related duties as assigned" and other phrases having similar meaning as used in position descriptions, means duties related to the basic duties of the position. Such phrases will not be used to regularly assign work that is not reasonably related to the duties listed in the position description.

### Section 37.2 Position Description Review

1. While classification actions are in process, the Agency will not reassign duties for the sole purpose of avoiding review of the current duties of the position.
2. When an employee has a question concerning the proper classification of his or her position, the employee will discuss the situation with his/her supervisory chain of command. If the matter cannot be resolved to the employee's satisfaction, the employee may request a position review through the servicing HR Office or file a classification appeal in accordance with Section 37.3 of this Article.
3. Whether or not a position review is determined to be appropriate, the employee will be notified within five (5) days of the receipt of the request. If the review is determined to be appropriate, the employee will be provided the results of the position review upon completion, normally within thirty (30) business days. However, this timeframe may need to be extended during periods of heavy workload, such as during the Agricultural, Economic, or Decennial Census Operations.
4. Upon request, the employee or his/her designated representative will be provided a copy of all official information, including all relevant facts concerning the position and the Agency's justification for its classification decision.
5. Where there is a statutory duty to bargain the impact of classification activity on employee(s), the Agency will provide notice and an opportunity to bargain consistent with the procedures in Article 16, Mid-Term Bargaining.
6. New and Upgraded Classifications
  - A. Changes to employee classification standards rendered by the Agency or OPM, having the effect of establishing a grade level that did not previously exist within an occupational series, will be forwarded by the Agency to the Union with the basis for that decision.
  - B. Promotion(s) resulting from the application of a new classification standard or correction of a classification error will normally be effective, provided they meet any applicable qualification, performance, or other requirements for the position in question, no later than the beginning of the second pay period following an Agency decision to promote the incumbent(s).
7. Downgrades
  - A. An employee whose position is reclassified to a lower grade, which is based in whole or in part on a classification decision, is entitled to a prompt written notice from the Agency. This notice will be issued to affected employees within five (5) business days of the decision. This includes employees who are eligible for a retained grade or pay. The notice will explain as follows:
    1. The reasons for the reclassification action;
    2. The employee's right to appeal the classification decision to the Department of Commerce (DOC) or OPM as provided by regulations if such appeal has not already been made;

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3. The time limits within which the employee's appeal must be filed in order to preserve any retroactive benefits under 5 CFR § 511.703 and 5 CFR § 532.703; and

4. Any other appeal or grievance rights available under applicable law, rule, regulation, or this Agreement.

B. Employees who have been downgraded as a result of a classification action and are receiving grade and pay retention shall be entitled to priority referral for non competitive consideration for permanent promotion prior to a vacancy being filled by competitive promotion under Article 35, Merit Promotion.

### **Section 37.3 Classification Appeals**

1. An employee who files a classification appeal to DOC or OPM is entitled to a copy of all official information relating to the classification of the position.
2. Employees shall have the right to Union representation in all phases of the classification process, including desk audits, covered by this Agreement.
3. If the employee wishes to pursue the matter further, he/she may file a grievance as appropriate or file a classification appeal in accordance with this Section of this Article and applicable regulations.
4. Classification appeals will be processed in accordance with 5 CFR Part 511, Subpart F, for General Schedule employees; 5 CFR Part 532, Subpart G, for Federal Wage System employees; and the provisions of this Agreement, as appropriate. The Agency will provide employees and their designated representatives with copies of procedures for filing classification appeals through the Agency and OPM channels upon request.

### **Section 37.4 Effective Date**

Increases in grade level based on reclassification will be effective no later than the second pay period following final approval of the action.

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## **ARTICLE 38. WITHIN-GRADE INCREASES (WGI)**

### **Section 38.1 General Provision**

A WGI is an increase in an employee's rate of pay from one step within his/her grade to the next. Eligibility for a WGI is based on length of service and performance.

### **Section 38.2 Eligibility for a WGI**

Permanent positions are eligible for WGIs. A permanent position is filled by an employee whose appointment is not designated as temporary by law and does not have a definite time limitation of one (1) year or less. A permanent position includes a position to which an employee is promoted on a temporary or term basis for at least one (1) year.

### **Section 38.3**

WGI will be considered and processed in accordance with OPM regulations. It is the agency's responsibility to track the timeframes for receiving a WGI; however, all employees are encouraged to track their individual WGI timeframes. The decision to grant or withhold a WGI must be supported by the employee's most recent rating of record.

### **Section 38.4 Waiting Period for a WGI**

A waiting period commences on the day of the first appointment regardless of tenure; the date of last equivalent increase; or after a period of nonpay status or a break in service (alone or in combination) in excess of fifty-two (52) calendar weeks, unless the nonpay status or break in service is creditable service under 5 CFR § 531.406.

### **Section 38.5 Length of Waiting Periods**

For a full-time or part-time employee with a scheduled tour of duty, the waiting periods in all GS grades are as follows:

- Step 2-3-4 52 weeks of creditable service
- Step 5-6-7 104 weeks of creditable service
- Step 8-9-10 156 weeks of creditable service

For an employee without a scheduled tour of duty (intermittent), the waiting periods are as follows:

- Step 2-3-4 260 days of creditable service in a pay status over a period of not less than 52 calendar weeks
- Step 5-6-7 520 days of creditable service in a pay status over a period of not less than 104 calendar weeks
- Step 8-9-10 780 days of creditable service in a pay status over a period of not less than 156 calendar weeks

Part-time employees are treated as full-time employees for purposes of completing a waiting period, i.e., a full-time and a part-time employee hired on the same day will complete a waiting period on the same date even though a part-time employee works fewer hours.

Intermittent employees get one (1) day credit for every day paid even if they only work an hour. Service creditable toward completing required waiting periods is counted in days: two hundred sixty (260), five hundred twenty (520), and seven hundred eighty (780) days, respectively.

Waiting periods for wage grade step increases are as follows:

- Step 2 26 weeks of creditable service
- Step 3 78 weeks of creditable service
- Step 4-5 104 weeks of creditable service

### **Section 38.6 Creditable Service**

Creditable service is defined in 5 CFR § 531.406 and 5 CFR § 315.802 which states in part:

1. Civilian employment in the federal government.
2. Periods of leave with pay (annual, sick, court, military, administrative, advanced annual and sick, etc.).
3. Service under a temporary appointment – if the employee is converted to a permanent appointment at the same grade level, the time worked under the temporary appointment counts toward the completion of the WGI waiting period requirement.

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4. Time in nonpay status for employees with a schedule tour of duty not exceeding the allowable amounts as follows:  
260 days equal 1 calendar year.

### **Section 38.7 Requirements**

To receive an automatic WGI, the following requirements must be met:

1. The employee has completed the required waiting period.
2. The employee has performed at an acceptable level of competence. This is determined by the employee's most recent rating of record.
3. The employee has not received an equivalent increase during the waiting period.

### **Section 38.8 WGI Effective Date**

WGIs are effective on the first day of the first pay period following the completion of the required waiting period.

### **Section 38.9 WGI Denials**

If, at the end of the required waiting period, the employee's performance is not at an acceptable level of competence for the purpose of approving the WGI, the employee will be given written notice as soon as possible, which will include:

1. A statement that the employee's work has been reviewed;
2. A statement that the employee's work has been determined to be of less than an acceptable level of competence;
3. A statement identifying the performance elements in which the employee's performance was less than an acceptable level of competence;
4. An explanation of how the employee's performance specifically failed to meet the acceptable level for that particular performance element;
5. A statement that the employee has the right to request, in writing, a reconsideration of the negative determination, provided the request is made within fifteen (15) days of the employee's receipt of the negative determination;
6. The name and title of the reconsideration official to whom the employee may submit a request for reconsideration;
7. A statement that the employee may have a Union representative in presenting a request to the reconsideration official;
8. A statement that the employee may have a reasonable amount of official time to review the materials relied upon in reaching the negative determination and to prepare a response; and
9. An explanation that the employee will be considered for a WGI once the employee demonstrates an acceptable level of competence.

### **Section 38.10**

A decision on reconsideration will be made within fifteen (15) days from the date of the written request to the reconsideration official. If the reconsideration official determines that the employee has met an acceptable level of competence, the WGI will be effective as of the first day of the first pay period after that determination.

### **Section 38.11**

If the reconsideration official upholds the negative determination, the employee may file a grievance under Article 12, Negotiated Grievance Procedure.

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**Section 38.12**

After a WGI has been withheld, the agency shall grant the WGI once the employee has demonstrated sustained performance at an acceptable level of competence. In such cases, the WGI will become effective on the first day of the first pay period after an acceptable determination.

**Section 38.13**

Denial of a WGI is not to be used as a punitive measure or for an act of misconduct in lieu of appropriate disciplinary actions.

**Section 38.14**

A notice of proposed adverse/disciplinary action that is not based on performance is not a bar against a favorable determination of an acceptable level of competence for purposes of a WGI.

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## **ARTICLE 39. TRANSIT SUBSIDY**

The Transit Benefit Program is a financial incentive that encourages federal employees to use mass transportation or Metro-approved vanpools, rather than single-occupancy vehicles, to commute to and from work. The amount of subsidy each employee may receive for commuting to work is dependent upon location and mode of transportation that is approved in accordance with the Transit Benefit Program, not to exceed the employee's actual allowable commutable expenses or the maximum level allowed by law, whichever is less.

The provisions of the Transit Benefit Program will be administered in accordance with law, this Agreement, and Agency policy. Any changes to existing policy will be handled in accordance with Article 16, Mid-Term Bargaining.



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## **ARTICLE 40. AWARDS**

### **Section 40.1 Purpose**

The awards program is intended to motivate and reward employees to continuously strive for excellence. The use of both monetary and nonmonetary awards has a significant effect on employee morale, motivation, and performance. In this regard, the Union and Agency agree to continue examining opportunities for improving the awards program and further agree that nothing contained herein shall prevent the Agency from implementing opportunities designed to improve the awards program.

#### **Section 40.1.1**

Performance awards, gainsharing awards, incentive awards, recognition awards, internal Census Bureau awards, and honorary awards are granted by the Agency based on merit, and within applicable budget limitations, to individuals or groups. Such awards will be granted in a fair, consistent, and objective manner. For information that is more detailed regarding awards in the above categories, contact the appropriate Servicing Human Resources Office (SHRO).

#### **Section 40.1.2**

When the Agency establishes budgets for employee awards, it will inform the Union of those budgets and the amounts to be allocated.

#### **Section 40.1.3**

Should the Agency determine, at any time during the life of this Agreement, the need to modify its annual awards budget (should one exist) and/or award programs, it shall give the Union formal notification in advance of its intention to do so in accordance with Article 16, Mid-Term Bargaining.

#### **Section 40.1.4**

The Agency will provide the Union, upon written request, all reasonable and necessary information regarding awards granted to employees covered by this Article in accordance with Article 6, Union Rights, Section 6.8, Right to Information.

### **Section 40.2 Performance Awards**

Performance awards are cash awards based upon performance as reflected in the employee's most recent summary rating of record.

#### **Section 40.2.1**

Performance awards for bargaining unit employees will be allocated and distributed in accordance with Section 40.1.1 of this Article.

#### **Section 40.2.2**

All awards recommended under this Article shall be subject to review and approval in accordance with 5 CFR 451 and DOC regulations. Such approval shall not be withheld unless the decision is based on criteria that are uniformly applied to all similarly situated employees.

Notices of disapproval must be in writing and explain the reason(s) for the disapproval.

### **Section 40.3 Quality Step Increases**

#### **Section 40.3.1**

A quality step increase (QSI) is an increase in an employee's rate of basic pay from one step of their position to the next higher step of the grade and is used to recognize and reward GS employees at any grade level who display outstanding performance. A QSI has the effect of moving an employee through the GS pay range faster than periodic step increases.

A QSI requires, but is not automatically granted for, a Level 5 rating. In addition, an employee must:

- Not have received a QSI within 52 consecutive calendar weeks preceding the effective date of the increase;
- Not be at the top step of their pay range;

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- Not be in the process of being promoted within 60 days after the effective date of the increase;
  - Have held the same grade and type of position (or similar position) in a pay status for at least six months before the end of the appraisal cycle;
  - Be expected to continue at the same high level of performance in the same grade and type of position for at least 60 days after the effective date of the increase; and
  - Not have been on detail or temporarily promoted to another position during the last six months of the appraisal period, unless detailed to the same grade and type of position.

#### ***Section 40.3.2***

If the Agency decides to grant the employee the QSI, the employee will have the option of electing the QSI or the applicable performance award. Recommendations for performance awards or QSIs are subject to approval by a higher-level management official before they are considered final.

#### **Section 40.4 Gainsharing Awards**

Gainsharing is a reward program that distributes cash payments to employees on a periodic basis (i.e., monthly, quarterly, etc.). The amount of the payments is based on a quantitative formula that measures specific performance levels in such areas as quality, efficiency, and productivity and compares actual performance to the pre-established performance goals of the Agency.

For Contact Center survey specific criteria, refer to the appropriate SHRO.

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## **ARTICLE 41. OVERTIME AND COMPENSATORY TIME**

### **Section 41.1 General**

#### ***Section 41.1.1***

Overtime for employees is governed by the Fair Labor Standards Act (FLSA), 5 U.S.C. § 5542 (Title 5 Overtime) and this Agreement. In the event of a conflict between this Agreement and the statutes and their implementing regulations, the statute and their implementing regulations will control the payment of overtime and/or compensatory time.

#### ***Section 41.1.2***

All bargaining unit positions will be determined to be FLSA “exempt” or “nonexempt” at the time the position is classified. When classification actions are performed and results in a change to the FLSA determination, the changed FLSA determination for the affected employees will be made available to the employees.

#### ***Section 41.1.3***

When overtime work is directed, employees will be compensated for overtime hours worked in accordance with applicable laws and regulations. When overtime work is covered by more than one (1) statutory authority applicable to the employee, the employee shall be paid under the authority providing the greater overtime pay entitlement in the workweek.

#### ***Section 41.1.4***

Overtime will not be distributed or withheld as a reward or penalty.

### **Section 41.2 Overtime Pay**

#### ***Section 41.2.1***

Overtime pay for FLSA nonexempt employees is equal to one and one-half (1½) times the employee's hourly rate of pay.

#### ***Section 41.2.2***

Overtime pay for FLSA exempt employees will be paid in accordance with 5 CFR § 550 and applicable government-wide rules, laws, and regulations.

### **Section 41.3 Types of Overtime**

#### ***Section 41.3.1 Regular Overtime***

Any overtime work scheduled in advance of the administrative workweek as part of an employee's regularly scheduled workweek is considered regular overtime. An employee shall be compensated for regular overtime work in accordance with the applicable provisions of the Office of Personnel Management (OPM) regulations. Employees who work beyond a quarter-hour (¼) increment of regularly scheduled overtime will be paid to the next quarter-hour (¼) increment.

Any employee covered under a flexible work schedule program established under Article 42, Work Schedules, may request compensatory time off in lieu of overtime premium pay for regular overtime work. Employees not covered by a flexible work schedule program must receive overtime pay for regular overtime work and cannot receive compensatory time. Additional provisions for earning and receiving compensatory time are found in Section 41.11 of this Article.

#### ***Section 41.3.2 Irregular or Occasional Overtime***

Overtime work that was not scheduled in advance and made a part of an employee's regularly scheduled workweek is considered irregular or occasional overtime.

Irregular or occasional overtime work is paid in the same manner as regular overtime work, except that the employee may request compensatory time off in lieu of overtime premium pay in accordance with Section 41.11.1 of this Article. A quarter-hour (¼) shall be the largest fraction of an hour used for crediting irregular or occasional overtime work. When irregular or occasional overtime work is performed in other than the full fraction, odd minutes shall be rounded up or rounded down to the nearest full quarter fraction of an hour. Eight (8) or more minutes will be rounded up to the next quarter-hour (¼), and less than eight (8) minutes will be considered part of the previous quarter-hour (¼).

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## **Section 41.4 Call Back**

Call-back overtime is a form of irregular or occasional overtime work performed by an employee on a day when work was not scheduled for the employee, or when he/she is required to return to his/her place of employment after having already concluded his/her tour of duty and/or departed the work site. In all call-back situations, the employee will be paid a minimum of two (2) hours of overtime or for the duration of the overtime assignment, whichever is longer.

## **Section 41.5 Distribution**

### ***Section 41.5.1***

Employees within an organizational unit will be offered or assigned overtime on a rotating basis in accordance with their particular skills. This will not necessarily result in everyone having the same number of overtime hours worked. At the discretion of the Agency, overtime shall be made mandatory or offered on a voluntary basis. In the case of voluntary overtime where there are an insufficient number of qualified volunteers for overtime work, the Agency may direct overtime.

When overtime is offered broadly among staff in an organizational unit, particular job series, or skillset, overtime hours will be assigned/offered fairly and equitably whether the overtime is mandatory or voluntary.

### ***Section 41.5.2***

All existing overtime rotation lists will become null and void upon the implementation of this Agreement. New rotation lists will be established as overtime is assigned or offered.

The Agency may develop an availability list for each employee to indicate his/her availability (yes/no) in order to determine employee interest for an overtime opportunity.

When there is a limited need for eligible employees, overtime rotation lists will be established at the lowest supervisory level applicable to the overtime being worked. At the time the rotation list is initially established, all qualified employees will be listed on the rotation lists in order of their Entrance on Duty (EOD) date (from most to least senior).

When multiple employees have the same EOD date, Service Computation Date (SCD) will be utilized (from most senior to least senior). In the event that EOD and SCD (or if SCD is not available) are the same, the order will be determined alphabetically by last name. Employees new to a work area will be listed at the bottom of the established rotation lists in the same order identified above. The overtime rotation lists will be made available to the employees upon request.

Rotation lists will be labeled voluntary overtime and mandatory overtime, as applicable, and will be maintained as appropriate. Separate lists will be maintained for weekdays and weekends.

Rotation lists will be established for "call-back overtime" as needed.

### ***Section 41.5.3 Rotational Overtime Procedures***

Once an employee has been offered or assigned an overtime assignment, he/she will be treated as "having worked" for purposes of future selection from the rotation list. The selection continues beginning with the next employee on the list.

If an employee is detailed or otherwise temporarily assigned outside of his or her supervisor's work unit, the employee shall still be considered available for overtime assignment under the losing supervisor's overtime rotation lists for the duration of such temporary assignment, provided that the employee is reasonably able to be present for the overtime assignment.

Supervisors may skip someone on the rotation lists when it is determined that the particular employee does not possess all the qualifications to perform the particular overtime assignment. In such cases, the employee retains his or her position on the rotation lists for the next assignment. Upon request, supervisors will provide impacted employees an explanation for why they were not selected.

### ***Section 41.5.4***

When appropriate, a supervisor may require an employee to complete an assigned task on the job that he/she was already performing that may require the employee to work overtime.

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## **Section 41.6 Records**

The Parties agree to use either the electronic time and attendance system, or the appropriate premium pay request form (e.g., form 1178 or 510). The records are maintained in the electronic system (e.g., time and attendance, email, filing system, etc.).

Upon request, overtime records maintained by the Agency may be reviewed by the Union, in accordance with Article 6, Union Rights, Section 6.8, Right to Information.

## **Section 41.7 Disputes**

The negotiated grievance procedure is the exclusive remedy for the resolution of disputes concerning overtime.

## **Section 41.8 Notice**

### ***Section 41.8.1 Voluntary Overtime***

If the offer of overtime is on days outside of the employee's basic administrative workweek, the Agency will notify the affected employee as early as practicable, except in cases of unforeseen work requirements.

If an employee volunteers for an overtime assignment, he/she is expected to report for and work for the duration of the overtime assignment accepted. If an employee is unable to report for the overtime work, he/she is expected to call within one (1) hour after their report time.

### ***Section 41.8.2 Mandatory Overtime***

For the purposes of mandatory overtime, employees will be given as much advance notice as possible. When practicable, notice will be at least one (1) day. The Agency agrees to consider the following:

1. Excusing employees from overtime assignments for:
  - A. Bona fide medical reasons, supported by documentation acceptable to the Agency; or
  - B. Extreme personal hardship in terms of the employee's religious, parental, or civic responsibilities; and
2. Flexible scheduling of required overtime hours in order to accommodate employee hardship.

In any event, should mandatory overtime not meet the Agency's needs or cause undue hardship on employees, the employees may be assigned from other areas to accomplish the work.

Employees are required to call within the first hour if they are unable to report for overtime work. Failure to do so could result in a recommendation for appropriate administrative action.

### ***Section 41.8.3 Holiday Overtime***

When voluntary or mandatory overtime is to be performed on a holiday, normally at least one (1) day advance notice will be given to the affected employees, except in unforeseen work requirements.

## **Section 41.9 Impact on Leave**

### ***Section 41.9.1 Mandatory Overtime***

Employees in a paid leave status will not be assigned overtime until they return to duty status unless they are needed for work requirements.

### ***Section 41.9.2 Voluntary Overtime***

Each time an employee is going to be out on annual leave or Alternate Work Schedule (AWS) day off, and wishes to be considered for overtime opportunities, the employee must notify their supervisor prior to the first day of leave status. The employee must provide a phone number and will receive one (1) courtesy call.

### ***Section 41.9.3***

Leave use history or balance will not be a factor in offering or assigning employees overtime. Overtime in conjunction with paid leave usage in the same pay period is permitted.

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**Section 41.9.4**

Employees on military leave under 5 U.S.C. § 6323(a) or court leave under 5 U.S.C. § 6322 are entitled to the same compensation they would have otherwise received but for their absence on military or court leave. If such leave is taken at a time when the employee would otherwise be required to perform regularly scheduled overtime, the employee must be compensated at the overtime rate of pay.

**Section 41.10 Pre-shift and Post-shift Activities**

If the Agency reasonably determines that a pre-shift or post-shift activity is closely related to an employee's principal activities, is indispensable to the performance of principal activities, and the total time spent in that activity is more than ten (10) minutes per daily tour of duty, the Agency shall credit all the time spent in that activity, including the ten (10) minutes, as hours of work.

**Section 41.11 Compensatory Time in Lieu of Overtime Pay****Section 41.11.1**

Compensatory time is time off from work that may be granted to an employee in lieu of payment for irregular and occasional overtime. Compensatory time earned is equal to the amount of time spent in overtime work, e.g., one (1) hour and fifteen (15) minutes of overtime work yields one (1) hour and fifteen (15) minutes of compensatory time. The following pertain to such compensation for overtime work:

1. FLSA Nonexempt Employees: Except as provided in Section 41.11.2 of this Article, the Agency will normally provide overtime pay for all overtime work performed by nonexempt employees. After considering work requirements, the Agency may grant an employee's request for compensatory time off for irregular or occasional overtime work performed, but nonexempt employees may not be required to accept compensatory time off in lieu of payment for irregular or occasional overtime work performed.
2. FLSA Exempt Employees
  - A. FLSA exempt employees may request to receive compensatory time off in lieu of overtime pay for irregular or occasional overtime. Such requests will normally be granted, subject to work requirements. If the employee does not make such a request, or if the Agency does not approve that request, the employee is entitled to compensation in accordance with Section 41.11.3 of this Article.
  - B. The Agency may require that employees whose rate of pay exceeds the maximum rate for GS-10, Step 10 be compensated for irregular or occasional overtime with compensatory time in lieu of overtime pay.

**Section 41.11.2**

The Agency may announce in advance of offering overtime that it will only compensate employees with compensatory time when overtime pay will not be available. In that case, an employee who is FLSA nonexempt may decline the offer of overtime. Such declination will not be held against the employee and the declination will not affect eligibility for future offers of overtime.

**Section 41.11.3**

Compensatory time in lieu of overtime earned must be used by the end of the twenty-sixth (26th) pay period after the pay period that it was earned; otherwise, it will be converted to overtime pay computed using the employee's rate of pay at the time the overtime pay was earned.

**Section 41.12 Stand-By Duty**

Employees who are required to remain in standby status as defined under 5 CFR 550.143 will receive appropriate compensation, in accordance with 5 CFR 550.141-144, 5 CFR 550.161-164, and any other applicable laws, rules and regulations.

**Section 41.13 On-Call**

Time spent in an on-call status is not considered hours of work if the employee is allowed to leave a telephone number or to carry an electronic device for the purpose of being contacted; even though the employee is required to remain within a reasonable call-back radius, or if the employee is allowed to make arrangements such that any work that may arise during the on-call period will be performed by another person.

**Section 41.14 Compensatory Time for Religious Observances**

Refer to Leave Article 46, Section 46.18, Accommodation for Religious Observances.

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## ARTICLE 42. WORK SCHEDULES

### Section 42.1 Purpose

This Article shall be administered in accordance with Title 5, U.S.C., Chapters 61; Title 5, CFR, Parts 610, and this Agreement. The purpose of this Article is to prescribe the policies covering hours of work for all employees in accordance with applicable law and regulation.

### Section 42.2 Definitions

1. Administrative Workweek means the period of seven (7) consecutive days, beginning on Sunday.
2. Adverse Agency Impact, for the purpose of this Article, means the condition for which the Agency may cancel an alternative work schedule or exclude some positions or employees from any particular alternative work schedule. Adverse Agency Impact means a reduction of the productivity of the Agency, a diminished level of services furnished to the public by the Agency, or an increase in the cost of Agency operations (other than any reasonable administrative costs relating to the process of establishing a flexible or compressed schedule).
3. Alternative Work Schedule (AWS) means a flexible or compressed work schedule.
4. Basic Work Requirement means the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award. For full-time employees, the basic work requirement is eighty (80) hours per biweekly pay period. A part-time employee's basic work requirement is regularly scheduled work from sixteen (16) to thirty-two (32) hours per week or thirty-two (32) to sixty-four (64) hours during a biweekly pay period on a prearranged schedule in either the permanent competitive or excepted service.

For the purpose of this Article, employment on a Mixed Tour Work Schedule, full-time, part-time, or intermittent basis is not included in the Basic Work Requirement.

5. Biweekly Pay Period, for the purpose of this Article, means the two (2) week period for which an employee is scheduled to perform work.
6. Compressed Work Schedule (CWS) means:
  - A. In the case of a full-time employee, a fixed eighty (80) hour biweekly basic work requirement that is scheduled by the Agency for less than ten (10) workdays; and
  - B. In the case of a part-time employee, a biweekly basic work requirement of less than eighty (80) hours that is scheduled by the Agency for less than ten (10) workdays and that may require the employee to work more than eight (8) hours in a day.
7. Core Hours means the time periods during the workday, workweek, or pay period that are within the tour of duty during which a regular day shift employee is required to be present for work. Normally, all regular day shift employees must be at work during core hours unless they are in an approved leave status or have been approved to use credit hours. The established core hours are from 11:00 a.m.-3:00 p.m. Monday through Friday, with the exception of the thirty (30) minute lunch period. Core hours do not apply to part-time employees.
8. Credit Hours means any hours within the flexible schedule that are in excess of an employee's basic work requirement, and that the employee elects to work to vary the length of a workweek or a workday. Employees must have prior supervisory approval to earn and use credit hours. Employees may carry over a maximum of twenty-four (24) credit hours from one pay period to the next; however, credit hours cannot be used in the same pay period in which they are earned.
9. Entrance on Duty (EOD) means the effective date of current continuous employment with the Agency without a break in service.
10. Flexible Work Schedules (FWS) are authorized under 5 U.S.C. § 6122:
  - A. In the case of a full-time employee with an eighty (80) hour biweekly basic work requirement, FWS means the ability to determine his or her own schedule within the limits set by this Agreement; and
  - B. In the case of a part-time employee with a biweekly basic work requirement of less than eighty (80) hours, FWS means the ability to determine his or her own schedule within the limits set by this Agreement.



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11. Maxiflex means a type of flexible work schedule that allows a full-time employee to vary the start and end times of each workday to include the core Agency hours. The total number of hours may vary each workday between 5 and 12 hours based on supervisory approval. This is exclusive of the meal period and dependent on the designated operating hours. The hours worked each week must be between 30 and 50.
  12. Tour of Duty means the hours of a day and the days of an administrative workweek that constitute an employee's regularly scheduled administrative workweek. Tour of duty under a flexible work schedule means the limits set by this Agreement within which an employee must complete his or her basic work requirement. Under a compressed work schedule or other fixed schedule, tour of duty is synonymous with basic work requirement.
  13. Mixed Tours of Duty are where an employee on a Mixed Tour Work Schedule Agreement may be assigned to a full-time, part-time, or intermittent tour of duty as needed to permit flexibility and allow the best utilization of the employee based on the work requirements of the organization. Employees hired to work on a Mixed Tour Work Schedule Agreement as a condition of employment are exempt from the sixteen (16) to thirty-two (32) hour per week part-time employment requirement.
  14. Intermittent Work in accordance with 5 CFR § 340.403 is appropriate only when the nature of the work is sporadic and unpredictable so that a tour of duty cannot be regularly scheduled in advance.
  15. Service Computation Date (SCD) is a date, either actual or constructed, that is used to determine benefits and is generally based on how long the person has been in the federal service. To establish the SCD, the agency must identify the employee's prior federal service, verify such service, determine how much, if any, of the service is creditable for leave accrual purposes, and then compute the SCD.
  16. Flextime is utilized in rare occasions when an employee's work schedule is interrupted by unusual/unexpected circumstances (i.e. family obligations, illness, child-care, weather, traffic, road construction, etc.).

### **Section 42.3 General Provisions**

The Parties agree that these procedures allow for the best utilization of employees based on the projected goals of the Agency. Work requirements and employee preferences will be considered in making assignments to work schedules. With this understanding, the following guidelines apply:

1. Normally, work shall be scheduled Monday through Friday in conjunction with biweekly pay periods. Exceptions may occur when work requirements make it necessary to include Saturdays and/or Sundays as part of the basic workweek for certain employees. For the contact centers, most employees are on Mixed Tour Work Schedule Agreements and are assigned to full-time, part-time, and intermittent, tours of duty. Mixed Tour Work Schedule Agreements may be utilized as appropriate. Scheduled hours can vary from pay period to pay period, week-to-week, and day-to-day.
2. For the contact centers, work schedules may include at least one (1) weekend day (Saturday and/or Sunday) based on project/survey needs. Employees on a Mixed Tour Work Schedule Agreement may be scheduled anywhere from two (2) to eighty (80) hours per pay period. Work permitting, contact center employees may be scheduled an average of twenty-five (25) hours of work per week.
3. The weekly work requirement for basic part-time career (non Mixed Tour) employees performing work at the JCC is twenty-five (25) hours per week, based upon the employee's availability.
4. Normally, an employee's workweek shall not extend for more than five (5) days of the period Sunday through Saturday. An effort will be made to avoid scheduling contact center employees for more than six (6) consecutive days and will include not fewer than four (4) days off during a pay period. In the event contact center employees are scheduled for more than six (6) consecutive days, an effort will be made to schedule two (2) consecutive days off, when workload permits. Nothing in this Section should be interpreted as prohibiting a contact center employee from receiving two (2) consecutive days off or from picking up additional hours through the trade/giveaway board, where applicable, that could result in an employee having less than four (4) days off during a pay period.
5. Generally, with the exception of contact center employees, all employees scheduled to work five (5) consecutive hours or more in a day shall be granted, on a nonpaid basis, a meal period of at least thirty (30) minutes each day. Regular day shift meal periods will be between 11:00 a.m. and 2:00 p.m. or near the mid-point of the shift or tour of duty for employees other than regular day shift. Supervisors may approve exceptions for unforeseen circumstances. Meal periods may not be used in combination with paid breaks, or as a means to modify an employee's arrival or departure time. Contact Center employees will follow the provisions of Section 42.3(7) of this Article.



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6. A paid rest period, also referred to as a break period, of fifteen (15) minutes will be provided to all employees for each four (4) hours of scheduled work. The rest period normally will occur in the middle of each four (4) hour work period. Employees may leave the immediate worksite area, but not the Agency premises, official duty station, or the approved alternate worksite when teleworking during a rest period. A rest period may not be used as a means to modify an employee's arrival or departure time and must not occur immediately before or after meal periods.
  7. A rest period of ten (10) minutes duration will be allowed to each employee during each period of extended shift overtime of at least two (2) hours duration. On days when all work is overtime (including compensatory time) and/or credit hours, a rest period of fifteen (15) minutes will be allowed for each period of four (4) hours worked. A rest period will not be appended to periods of leave, the beginning or end of the employee's work shift, or at the beginning or end of overtime.
  8. The Agency agrees to authorize a rest/break period for contact center employees as follows:

Less than 4 hours of work:	No rest/break period
4 hours of work:	One 15-minute rest/break period
5 hours of work:	One 15-minute rest/break period
6 hours of work:	Two 10-minute rest/break period or one 20-minute rest/break period
7 hours of work:	Two 15-minute rest/break period
Over 7 hours of work:	Two 15-minute rest/break period plus 30 minutes unpaid meal period

Employees may leave the immediate worksite area, but not the Agency premises nor the official duty station or the approved alternate worksite when teleworking, during a rest/break period. Breaks/rest periods may not be used as a means to modify an employee's arrival or departure time and must not occur immediately before or after meal/lunch periods.
  9. Supervisors may designate specific times for meal and rest/break periods consistent with (3) through (7) of this Section if it is determined that lack of such designation could negatively impact the work unit's operation. Such designations will not be arbitrary or capricious.
  10. Contact center employees are scheduled through an electronic system taking into consideration employee schedule preferences, availability, the current work needs, sponsor requirements, employee qualification skills, and seating capacity. In the case of limited work, when there are more equally qualified employees on the same tour available to perform the same work than is needed during the same scheduled timeframe, an employee's EOD and/or performance will determine the schedule assignment by most senior EOD.
  11. Certain alternative work schedules may not be suitable and, therefore, may not be permitted for some operations where the ability to perform one's own job is directly affected by the absence of another employee, such as shift work, around the clock operations, or team-based production work. In such circumstances, employees may be limited to specific AWS schedules, or may be required to work a regular work schedule (neither flexible nor compressed).
  12. If a holiday falls on a full-time employee's nonworkday, the employee is entitled to an "in lieu of" holiday. In such cases, the employee's holiday will normally be the preceding workday. Supervisors have the discretion to deviate from this procedure on a case-by-case basis where there would not be sufficient office coverage.
  13. Part-time employees are entitled to all federal holidays, declared by law or Executive Order, when the holiday falls on a day they are required to work. Some employees may be required to work on holidays, thus entitling them to holiday pay. Part-time employees must not be required to move their regularly scheduled days off solely to avoid payment of holiday premium pay or reduce the number of holiday hours included in the basic work requirement. When a holiday falls on a nonworkday of a part-time employee, that employee is not entitled to an "in lieu of" day for that holiday.
  14. A full-time employee on a flexible schedule who is relieved or prevented from working on a day designated as a holiday is entitled to his/her rate of basic pay on that day for eight (8) hours. A full-time employee on a compressed schedule who is relieved or prevented from working on a day designated as a holiday is entitled to his/her rate of basic pay for the number of hours scheduled on that day.
  15. Other schedules, such as but not limited to weekend work and hours of work other than those mentioned in this Article, may be constructed to accommodate special work requirements. Special scheduling arrangements in effect prior to the implementation of this Agreement will remain in place.

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16. Management may require employees to report for work at certain times or adjust their hours as needed for work-related requirements, such as press releases, attendance at meetings, conferences, and training. Such instances shall be infrequent, isolated, and short term.
  17. Supervisors may assign employees new to the Agency or new to a work area to a particular schedule as appropriate for training and development, usually for no more than six (6) months. Afterwards, the employee may request a different schedule consistent with the procedures of this Article.
  18. Only employees who work the flexible schedule are eligible to earn credit hours.
  19. Telework/remote work will not, in and of itself, disqualify employees from a particular work schedule.
  20. An employee may submit a request for a schedule change to pursue self-development activities. Such requests will be processed in accordance with Section 42.6 of this Article.
  21. The Agency may assign employees performing below a Level (3) in their overall performance to a work schedule, as appropriate, for such purposes as meeting with supervisors, mentors, or other designated staff, attending specific training, and development activities in order to improve their performance consistent with the Performance Management System. Afterward, employees may request a different schedule consistent with Section 42.6 of this Article.
  22. The Agency may assign employees exhibiting attendance problems to a particular schedule as appropriate to assist the employees in correcting attendance issues. After demonstrating improvement, employees may request a different schedule consistent with Section 42.6 of this Article.
  23. Employees may be required to use either automated time recording equipment or a sign-in/sign-out sheet, but not both.

#### **Section 42.4 Regular Day Shift Schedule**

The regular schedule consists of a five (5) day, forty (40) hour workweek. The workday is 8½ hours Monday through Friday that includes a noncompensable thirty (30) minute meal period.

#### **Section 42.5 Alternative Work Schedules**

The Parties recognize that the use of alternative work schedules can improve productivity and morale and provide greater service to the public. Therefore, full-time employees may select from the following work schedules in accordance with this Article, with supervisory approval.

1. Flexi Time Schedule
  - A. The flexi time schedule is a flexible schedule that consists of a five (5) day, forty (40) hour work week. The workday is 8½ hours that includes a noncompensable thirty (30) minute meal period.
  - B. Core hours for regular day shift employees are from 11:00 a.m. to 3:00 p.m. Monday through Friday, with the exception of the thirty (30) minute meal period. All employees must be present at work during core hours, unless otherwise approved for leave, credit hours, or compensatory time off.
  - C. Employees select a starting time in accordance with daily hours of operation for their respective location. Starting and ending times may vary for contact center employees and employees on shift work.
  - D. Employees may deviate up to thirty (30) minutes on either side of their established starting or ending time without prior supervisory approval, as long as all hours of work are in accordance with daily hours of operation for their respective location. Hours of work may vary beyond these times for contact center employees. An employee voluntarily flexing past 6:00 p.m. is not entitled to night differential pay.
  - E. Credit hours: Credit hours may be earned, worked, or used as time off in no less than fifteen (15) minute increments when employees meet the basic daily work requirement through work, approved leave, earned credit hours, or compensatory time off.
    1. Credit hours require supervisory approval before they can be worked or used. Requests will be approved or denied by the supervisor as soon as practicable, normally within one (1) business day. In rare instances where unforeseen circumstances warrant, the earning of credit hours may be approved retroactively at the discretion of the supervisor.

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2. Credit hours cannot be used in the same pay period in which they are being earned. Working credit hours is voluntary on the part of the employee and does not confer an entitlement for overtime.
  3. If credit hours are approved and overtime is subsequently made available prior to the working of the credit hours, the employee will be afforded the opportunity to elect to work the overtime.
  4. Employees may carry over a maximum of twenty-four (24) credit hours from one (1) pay period to the next.
  5. Employees are responsible for monitoring their credit hours, ensuring they are not earned without supervisory approval, and that the maximum carry over balance is not exceeded. Credit hours in excess of the maximum carry over allowance are forfeited and do not confer any entitlement to pay.
  6. All credit hours, earned and used, must be recorded using sign-in/sign-out sheets or email to confirm starting and ending times, and must be properly recorded in an electronic timekeeping system. Unofficially maintained balances and arrangements "off the record" are prohibited.
  7. An employee may use earned credit hours for all or any part of approved leave.
  8. Time spent in nonpay status, such as Absence Without Leave (AWOL) or LWOP will not count toward the basic work requirement for the purpose of accumulating credit hours.

## 2. 5-4/9 Compressed Schedule

The 5-4/9 schedule is a type of compressed work schedule that allows employees to work eighty (80) hours per pay period over nine (9) days during the regular pay period and have the tenth (10th) day of the regular pay period off.

- A. Employees select a set schedule of consecutive hours to work in accordance with daily hours of operation for their respective location for each of nine (9) days. The latest arrival time is 9:30 a.m. at HQ and NPC (exception: the latest arrival time for the eight (8) hour day is 10:00 a.m.). This starting time is specifically for day shift. Starting times will vary for other shifts throughout the day/evening.
- B. Employees will work 9½ hours a day for eight (8) days and 8½ hours for one (1) day during the pay period, unless otherwise on approved leave. This includes a thirty (30) minute noncompensable meal/lunch period.
- C. Employees will normally have their day off on a Monday or a Friday, unless otherwise approved by the supervisor. Employees may also choose to split the day off into two (2) half-days during the pay period.

## 3. 4/10 Compressed Schedule

The 4/10 schedule is a type of compressed work schedule that allows employees to work forty (40) hours per week over four (4) days during the regular workweek with one (1) day of the regular workweek off.

- A. Employees select a set schedule of consecutive hours to work in accordance with daily hours of operation for their respective location for each of the four (4) days. The latest arrival time will be 8:30 a.m. at HQ and NPC.
- B. Employees work ten and one-half (10½) hours a day for the four (4) days during the workweek. This includes a thirty (30) minute non compensable meal period.
- C. Employees will normally have their day off on a Monday or a Friday, unless otherwise approved by the supervisor.

## 4. Maxiflex Schedule

Employees working on a maxiflex schedule have a basic work requirement of eighty (80) hours each biweekly pay period.

- A. An employee may designate different starting and ending times for each workday within normal business hours in scheduling their tour of duty. Normal working schedule hours include weekdays from Monday through Friday with start/end times as follows:
  1. HQ and NPC: 6 a.m. to 7 p.m.
  2. Denver RO: 7 a.m. to 6 p.m.
- B. Core hours for regular day shift employees are from 11:00 a.m. to 3:00 p.m., Monday through Friday, with the exception of the noncompensable thirty (30) minute lunch period. All employees must be present at work during core hours unless otherwise approved for leave.

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## **Section 42.6 Requests for Change of Work Schedule**

1. Employees may request to change their schedule at any time throughout the calendar year. Such requests should be submitted as far in advance as possible, and processed on a first-come, first-served basis. Any remaining conflicts will be resolved in favor of the most senior employees, based on EOD. Employees do not need to provide a business justification for the schedule change. Schedule change requests should occur infrequently.
2. Additionally, NPC employees may request a schedule change during the period that coincides with the health benefits open season. When requests for a work schedule preference cannot be accommodated, approvals will be based on most senior EOD. All schedule changes under this provision will be processed by the end of the calendar year. These new schedules go into effect the first pay period of the following calendar year.
3. Employees who are requesting a particular work schedule must indicate which schedule they are requesting, which day(s) is (are) requested as the nonworkday(s) and in the case of the 5-4/9 schedule, which day is requested to be the eight and one half (8½) hour day and which days are requested to be the nonwork or split day. Employees must also select a starting and stopping time within the arrival and departure time bands for each day of the pay period.
4. Except for changes requested under Item (2) of this Section, if a supervisor denies an employee's request for a particular work schedule or proposes to terminate an individual employee's participation in an alternative work schedule, he or she will notify the employee in writing, normally within seven (7) days, provide the basis for the denial or termination, and provide an alternate schedule to the employee. The supervisor may deny an employee's request for or propose to terminate an employee's participation in a particular work schedule if the supervisor determines that the employee's participation could negatively impact the work unit's coverage requirements or the need to respond to the public. Denials of requests to work a particular schedule will not be arbitrary or capricious.

## **Section 42.7 Temporary Suspension of Work Unit Work Schedules**

1. Occasions may arise when certain work schedules must be temporarily suspended as a result of unusual workload or operational demands. The Agency shall make a reasonable effort to avoid suspension of an employee's participation in these work schedules.
2. Individual exceptions to, or personal needs resulting from a temporarily suspended work schedule will be considered on a case-by-case basis.
3. If the circumstances requiring the suspension of schedule permit, the Agency will provide the employee with advance notice of at least one (1) pay period.
4. If an employee's flexible work arrangement is suspended, it will automatically be restored the next pay period after the reason for the suspension has been met.
5. The Agency will limit the suspension to as short a timeframe as necessary to meet the workload or operational demands. Such instances shall be infrequent, isolated, and short term.
6. Notices of any temporary suspensions will be provided to the Union before implementation.
7. If the Agency believes that the "temporary suspension" will extend beyond two (2) pay periods, the Agency will notify the Union in accordance with Article 16, Mid-Term Bargaining.
8. Decisions on temporary suspensions of any work schedule for any employee will not be arbitrary or capricious and will be based on work requirements.

## **Section 42.8 Termination of Alternative Work Schedules**

1. If the head of the Agency finds that a particular alternative work schedule has had an "adverse agency impact," as defined in 5 U.S.C. 6131(b), the Agency must promptly provide notice to the Union of its desire to reopen the Agreement to seek its termination.
2. Upon demand by the Union, the Parties will then negotiate over the Agency's proposal.
3. If an impasse results, the dispute will go to the FSIP, which will determine within sixty (60) days whether the Agency's determination is supported by evidence.
4. The alternative work schedule may not be terminated until agreement is reached or the FSIP acts.

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## **Section 42.9 Shift Work and Other Hours of Work**

When the accomplishment of the Agency's work requires that there be more than one (1) shift with a full-time basic work requirement over the course of a day, the Agency will determine which positions are required to be on duty for more than one (1) shift. Consideration will be given to provide the same flexibilities to shifts other than the regular day shift while minimizing any negative impact to the flexibilities provided for the regular day shift.

## **Section 42.10 Assignment to Different Shifts**

Employees who are scheduled to work more than two (2) consecutive work shifts within any seven (7) consecutive day period will be compensated with overtime or compensatory time off in accordance with law.

## **Section 42.11 Off-Duty Time**

Except those designated as Emergency Response Group, Continuity of Operations members, or essential personnel under emergency conditions, employees should not normally be required to report to work unless they have had at least ten (10) hours off-duty time between nonovertime work tours. Contact center employees will be deemed to have waived this provision by expanding their availability in the automated system according to Section 42.18 of this Article.

## **Section 42.12 Requests for Adjustment of Work Schedules for Religious Observances**

Employees should submit a written request to their supervisor for an adjusted work schedule for religious observances. When the accommodation request itself does not provide enough information to enable the Agency to make a determination, and the Agency has a bona fide doubt as to the basis for the accommodation request, employees may be required to provide acceptable documentation of the need to abstain from work. At the Agency's discretion, an employee's self-certification may be considered acceptable documentation.

When deciding whether an employee's request for an adjusted work schedule should be approved, a supervisor should not make any judgment about the employee's religious beliefs or his or her affiliation with a religious organization.

When a supervisor approves an employee's request, that supervisor may determine whether the alternative work hours will be scheduled before or after the religious observance.

An employee should be allowed to accumulate the number of hours of work needed to make up for previous or anticipated absences from work for religious observances.

If an employee is absent when he or she is scheduled to perform work to make up for a planned absence for a religious observance, the employee must take paid leave, credit hours, request LWOP, or be charged AWOL, if appropriate.

The Agency may disapprove an employee's request only if it would cause undue hardship on the Agency's business. Disapprovals will be given to the employee in writing within five (5) days of the request.

## **Section 42.13 Temporary Assignments and AWS Schedules**

Where possible, effort will be made to allow employees temporarily assigned or detailed to other parts of the organization to remain on the schedule they worked prior to the temporary assignment or detail. However, nothing precludes an employee from requesting a change of schedule in accordance with Section 42.6 of this Article.

## **Section 42.14 Night Differential**

### ***Section 42.14.1***

All GS employees, working any schedule, and scheduled to work between the hours of 6:00 p.m. and 6:00 a.m. are entitled to night shift differential equal to ten (10) percent of their basic rate of pay. Employees are not entitled to night pay for voluntarily working flexible hours between 6:00 p.m. and 6:00 a.m., including the earning of credit hours.

### ***Section 42.14.2***

All FWS employees are entitled to a night shift differential of 7.5 percent of their scheduled rate of pay for regularly scheduled nonovertime work, when a majority of the hours occur between 3 p.m. and midnight; and a night shift differential of ten (10) percent of their scheduled rate of pay for regularly scheduled nonovertime work, where a majority of the hours occur between 11 p.m. and 8 a.m.

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### **Section 42.14.3**

No employee may receive night differential pay when engaged in training, except when the training takes place during hours in that employee's regular tour of duty that otherwise qualify for night differential.

### **Section 42.15 Sunday Differential**

A full or part-time employee who performs regularly scheduled nonovertime work, a part of which is performed on a Sunday, is entitled to their regular rate of pay plus premium pay at a rate equal to 25 percent of their rate of basic pay for the entire daily tour of duty, not to exceed eight (8) hours.

### **Section 42.16 Notification of Schedules for Contact Center Employees**

1. The Agency will notify employees of their schedule fourteen (14) days in advance of the administrative workweek, although it is not always possible. There may be unforeseen circumstances, such as late notice workload adjustments or system limitations that could impact the posting of employees' schedules.
2. In the rare event of a management-initiated schedule change after posting, the Agency will notify employees as far in advance as possible. If the employee has a prior commitment during the newly scheduled work hours, an effort will be made to accommodate that commitment, including:
  - A. Not applying the schedule change;
  - B. Applying the change to alternate staff; or
  - C. Providing alternate work hours to the affected employee where applicable, to prevent a loss in the number of scheduled weekly work hours.

If none of the above are possible, the employee may be required to work the scheduled change.

3. If an employee is not scheduled to work or is absent during the days prior to the schedule change, the Agency will attempt to contact the employee.

### **Section 42.17 Employee Requests for Changes in Availability for Contact Center Employees**

1. Changes to employee availability or changes to scheduling preferences will require a written request to be submitted personally or electronically to an appropriate supervisor for approval.

The request must include the following information:

- A. The effective date;
  - B. The duration or ending date (where applicable); and
  - C. The new days and hours of availability.
2. In order to ensure full consideration of approving a request for a change in availability, employees should submit such requests at least three (3) weeks before the scheduled posting date.
3. The Agency agrees to consider an employee's request for a change in availability. Preference will be given to the most senior EOD.
4. Changes in availability will be approved or denied based upon operational needs.
  - A. Before denying such a request, the Agency will attempt to fill the needed availability with current staff.
  - B. Approval/denial decisions will be made in writing within seven (7) calendar days of receipt. Denials also will include the specific operational reason(s).
  - C. Employees may request higher-level management review of denial decisions.

### **Section 42.18 Employee Request for Schedule Modification for Contact Center Employees**

1. Prior to the schedule being posted:
  - A. Employees should submit requests for time off in person or electronically at least three (3) weeks prior to the schedule posting date to ensure full consideration of approving the request.
  - B. For multiple, frequent, or lengthy absences (three [3] consecutive days or more), the Agency may request documentation to support the absence.



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- C. Requests for time off will be processed on a first come, first-serve basis and will be approved or denied based upon operational needs.
    1. Before denying such a request, the Agency will attempt to fill the need with current staff.
    2. Approval/denial decisions will be made in writing within seven (7) calendar days of receipt. Denials also will include the specific operational reason(s).
    3. Employees may request higher-level management review of denial decisions.
  2. After the schedule is posted:
    - A. The "Trade Board" electronic system was initiated to help employees swap or give away their shifts after a schedule has been posted. Employees can pick up available shifts, swap/trade, or give away shifts on the Trade Board. The Trade Board only applies to posted schedules.
    - B. Swap and giveaway requests may be submitted and delivered to the employee electronically.
    - C. Swap and giveaway requests will be approved or denied based upon operational needs within twenty-four (24) hours following receipt by the scheduler or supervisor. All denials will be justified in writing. Employees may request higher-level management review of denial decisions.
    - D. If the denial is upheld by higher-level management and the requested change involves an absence during scheduled time, the employee may request appropriate leave, where applicable.

## **Section 42.19 Contact Center Flextime**

### **Section 42.19.1**

The Parties recognize that allowing some scheduling flexibilities to employees, when attendance issues arise with work schedules, may improve their productivity and morale.

Flextime is utilized in rare occasions when an employee's work schedule is interrupted by unusual/unexpected circumstances (i.e. family obligations, illness, child-care, weather, traffic, road construction, etc.). Contact Center employees can request an adjustment to their normally scheduled shifts to address circumstances that may arise.

Employees will be allowed up to two (2) opportunities for flextime per pay period. Requests for additional time may be considered on a case-by-case basis (i.e., opportunities and/or hours per pay period). Employees who take advantage of flextime will be expected to make up their time as agreed. If their time is not made up, employees will be expected to account for their time with the appropriate leave category (Annual, Sick, LWOP, AWOL). If an employee establishes a pattern of not making up their time, they will no longer be able to take advantage of the flextime option.

If an employee request can be granted, flextime must be utilized in 15-minute increments up to two (2) hours. When making up lost scheduled time, increments of time should equal the amount of flextime requested. For example, an employee requests to flex scheduled time for one (1) hour, so when making up the time, it should be in a one (1) hour increment.

Flextime may be requested at any time during an employee's shift. The employee can request flextime to leave and return on the same day, or make up the time on another day, as long as it is within the same pay period and meets the survey business needs.

Employees should call in and speak to a supervisor to request Flextime. If a supervisor is not available to take their call, they may leave a voice message or send an email. Flextime is subject to supervisory approval and leaving a voicemail or sending an email does not constitute supervisory approval.

Disapproval of an employee's request will be based on valid business reasons and will be provided in writing to the employee.

Flextime will not be available past the survey's normal business hours or business days. Flextime may be carried over to another day within the workweek or pay period, but cannot be carried over to a different pay period.

Employees are responsible for coding their use of Flextime into the electronic time-keeping system, including documenting the flex activity into the notes.

The electronic time-keeping and contact center scheduling systems are mechanisms already in place that will be utilized for tracking an employee's use of Flextime. Supervisors and timekeepers will continue to crosscheck scheduled hours versus hours worked.

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If the circumstances require the suspension of an employee's use of Flextime, the Agency will provide the employee with advance notice of at least one pay period, including justifiable reasons for the suspension.

If an employee's use of Flextime is suspended, it will immediately be restored the next pay period following a resolution to the reason for the suspension.

#### ***Section 42.19.2 Temporary Suspension of Flextime***

Occasions may arise when the use of Flextime must be temporarily suspended as a result of unusual workload or operational demands. The Agency will make a reasonable effort to avoid suspension of an employee's use of Flextime.

Individual exceptions to, or personal needs resulting from a temporary suspension of the use of flextime will be considered on a case-by-case basis.

The Agency will limit a suspension period as necessary to meet the workload or operational demands. Such instances shall be infrequent, isolated, and short term.

An advance courtesy copy of any temporary suspension notices will be provided to the Union.

#### **Section 42.20 Self-Studies/Monthly Memos for Contact Center Employees**

Most employees should complete their self-study prior to the first day of the project/survey production. The exceptions to this will be for employees who are not scheduled to work, or who are on the schedule and due to an illness were incapacitated and unable to work during the week prior to the beginning of the survey/project. Those employees will be permitted to do the self-study at the beginning of their work schedule on their first scheduled production day. Monthly memos are normally completed at the beginning of the employees work schedule on their first scheduled production day.

#### **Section 42.21 Staff Updates, Worksite Prep, and Related Activities for Contact Center Employees**

The Agency will schedule meetings, regularly, or as necessary, during employees' scheduled duty time for purposes such as informing employees of unit goals and progress, for sharing and exchanging information, and possible improvements relevant to the work being performed.

Onsite employees will receive a reasonable amount of duty time to clean and disinfect their workstation at the beginning of their shift. This is for work-related preparatory activity and is not an authorized break. The Agency will supply cleaning supplies for this purpose. If more time is needed, the employee should seek assistance from their supervisor.

#### **Section 42.22 Voluntary Reduction in Work Assignments for Contact Center Employees**

The Agency agrees to consider an employee's request to be removed from a project/survey. This does not preclude assigning the employee to other projects/surveys. Before denying such a request, the Agency will attempt to fill the needed availability with current available staff.

Employees may request higher-level management review of denial decisions.

#### **Section 42.23 Extra Hours for Contact Center Employees**

The dates and timeframes of the extra hours offered will be based on project/survey needs. Once the Agency determines that extra hours are required, volunteers will be solicited. Extra hours will be offered to all qualified employees. However, JCC extra hours will first be offered to employees on a part-time work schedule, not to exceed thirty-two (32) hours, before offering to employees who have signed a Mixed Tour Work Schedule Agreement. If there is an inadequate number of qualified volunteers, the Agency will solicit additional volunteers including making calls to off-duty staff. If there is an excess of equally qualified volunteers with appropriate skill set, selection will be made by EOD with the most senior being selected first.

It is the employee's responsibility to ensure current and accurate contact information is provided. The Agency agrees to take all possible actions to eliminate barriers to employees volunteering for extra hours.

Employees who are not already on the work schedule, but are volunteering extra hours, must be available to work a minimum of two (2) hours. Employees who are already on the work schedule, and are volunteering extra hours, must be available to work a minimum of one (1) hour. When offering extra hours on multiple projects/surveys, management will determine which project/survey the employee will be assigned to work.

Situations may arise that the Agency can waive the minimum one (1) hour requirement for work-related reasons.



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The Union will be notified in advance of the opportunity for extra hours.

Supervisors may recognize employees who voluntarily work extra hours and perform work beyond what is expected (i.e., through Performance Management and/or through other appropriate employee recognition programs).

#### **Section 42.24 Slack Work for Contact Center Employees**

The provisions of this Section below apply only to employees on a Mixed Tour Work Agreement or intermittent appointment.

Slack work occurs when work for a particular survey or project is reduced thus having an impact on staff currently scheduled and working on that assignment. Reductions in staff hours during periods of slack work will be determined by specific survey or project needs. In such instances, the Agency will apply the following guidelines when reducing staff in this sequential order:

1. Assign other work or training to affected employees if such work or training is available;
2. Solicit volunteers;
3. If there are not enough volunteers the least senior by EOD within that period will be required to leave first;
4. Employees with refusal/bilingual skills will be slacked by survey needs;
5. Employees assigned to work surveys/projects not experiencing slack work will not be affected; and
6. The Union will be notified in advance of the need to slack.

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## **ARTICLE 43. OTHER THAN FULL-TIME**

### **Section 43.1 Part-Time Career Employment**

In accordance with the provisions of 5 CFR § 340.202, the following applies to all employees serving on part-time work schedules with the exception of those assigned to a mixed tour of duty. Refer to Article 42, Work Schedules, for information on Mixed Tour Work Schedule Agreements.

1. The tour of duty for part-time employees shall be between sixteen (16) and thirty-two (32) hours per week.
2. Employees may request to change the number of hours to be worked within the sixteen (16) to thirty-two (32) hour range.
3. Upon request from a bargaining unit employee, the servicing HR Office will provide pertinent information regarding the personnel effects of changing to and from part-time permanent positions. Such information may include, but is not limited to pay, benefits, time-in-grade requirements, within grade increases, accumulation of leave, and changes in competitive levels in the event of a Reduction in Force (RIF).

### **Section 43.2 Temporary and Term Staffing Options**

All temporary and term staffing within the bargaining unit will be done in accordance with applicable laws, government-wide regulations (5 CFR Part 316), and this Agreement.

Temporary appointments are for short-term needs that are not expected to last longer than one (1) year when the need for the employee is not permanent. This appointment may be extended up to a maximum of one (1) additional year (twenty-four [24] months of total service).

Term appointments are for more than one (1) and may be up to four (4) years, in extenuating circumstances, when the need for the employee's services is not permanent.

Consistent with 5 CFR 316.301(c) (1) and (2), the agency may make a term appointment for a period of more than one (1) year but not more than ten (10) years for certain positions as approved by the Office of Personnel Management, when the need for a position is not permanent.

Under this provision, an agency may extend an appointment made for more than one (1) year but fewer than ten (10) years up to the ten (10) year limit in increments determined by the Agency.

No appointment made under this Section may last longer than ten (10) years from the date of the initial appointment.

### **Section 43.3 Seasonal Employment**

If the Agency chooses to hire under Seasonal employment pursuant to the provisions set forth in 5 CFR 340.402, the Union will be notified in accordance with Article 16, Mid-term Bargaining.

### **Section 43.4 Intermittent Employment**

If the Agency chooses to hire under Intermittent employment pursuant to the provisions set forth in 5 CFR 340.403, the Union will be notified in accordance with Article 16, Mid-term Bargaining.

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## **ARTICLE 44. PROBATIONARY/TRIAL-PERIOD EMPLOYEES**

This Article establishes policies and procedures of the Agency on probationary and trial periods, pursuant to 5 CFR § 213, 315, 316 and DAO 202-315, or any modification thereof.

### **Section 44.1**

The term “probationary period” applies to career or career-conditional appointments; the term “trial period” applies to term or excepted service appointments.

### **Section 44.2**

Under 5 CFR § 315.801, the first year of service of an employee who is given a career or career-conditional appointment is a probationary period when the employee:

1. Was appointed from a competitive list of eligible candidates under 5 CFR § 315, Subpart C; or
2. Was reinstated under 5 CFR § 315, Subpart D, unless during any period of service, which affords a current basis for reinstatement, the employee completed a probationary period or served with competitive status under an appointment, which did not require a probationary period.

The probationary period is one (1) year and may not be extended, as provided in 5 CFR § 315.801.

### **Section 44.3**

For employees serving a probationary period, as required under 5 CFR § 315.801, prior federal civilian service counts toward completion of probation when the prior service:

1. Is in the same Agency;
2. Is in the same line of work (determined by the employee’s actual duties and responsibilities); and
3. Contains or is followed by no more than a single break in service that does not exceed thirty (30) calendar days.

### **Section 44.4 Excepted Service Employees**

Employees appointed under the provisions of 5 CFR § 213, Excepted Service will serve a trial period of two (2) years. The trial period for preference eligible (veterans) under an excepted service appointment is one (1) year. According to 5 CFR § 213.3102(u), the Agency may noncompetitively convert an employee with a disability to the competitive service when he/she has completed two (2) years of satisfactory service, without a break of service, in a non temporary appointment under this authority.

### **Section 44.5 Temporary Employees**

All temporary appointments within the bargaining unit will be made in accordance with applicable laws and government-wide regulations (5 CFR § 316 et al.). Temporary appointments will be used only as stipulated in 5 CFR 316.401(a).

When it is determined that a temporary employee is to be separated before the end of their “Not to Exceed” date, the employee will be given two (2) week notice barring any unforeseen circumstances. This provision shall not apply to separations based on conduct or performance.

### **Section 44.6 Term Employees**

1. Consistent with applicable laws, regulations, and this Agreement, employees serving on term appointments shall be afforded the same opportunities, rights, and remedies as career employees for the duration of their term.
2. In accordance with 5 CFR § 316.304, the first year of service of a term employee is a trial period, regardless of the method of appointment. Prior federal civilian service is credited toward completion of the required trial period in the same manner as set forth in 5 CFR § 315.802.

### **Section 44.7**

Probationary and trial-period employees will be provided performance plans for their job in accordance with Article 33, Performance Management System.

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**Section 44.8**

During the probationary or trial period, the Agency evaluates the employees' conduct and performance in the actual duties of their positions to assess fitness and qualifications for continued employment.

**Section 44.9**

The Agency will consider employees' specific requests for assistance to improve his/her performance. Where performance deficiencies are reported, the employee and the supervisor will explore courses of action that may be taken to overcome them, and the supervisor will provide assistance that the Agency determines is appropriate. Any official forms used to document performance or conduct problems will be shared with the employee.

**Section 44.10**

The Agency may terminate an employee who fails to demonstrate fitness or qualifications for continued employment at any time during the probationary or trial period. The employee shall be notified in writing as to why he/she is being terminated and the effective date of the action. At a minimum, the information in the notice shall consist of the conclusions as to the inadequacies of the employee's performance or conduct.

**Section 44.11**

If an employee, while serving a probationary period, is terminated for conditions arising before appointment, the employee has a right to advance written notice of the separation, the reason for the separation, an opportunity to provide a written answer and supporting affidavits, and any applicable appeal rights, in accordance with 5 CFR § 315.805. The Agency shall consider an employee's response in reaching its decision along with any applicable appeal rights, which shall be provided to the employee at or before the effective date of the decision.

**Section 44.12**

The termination of an employee while serving a probationary is not subject to the Negotiated Grievance Procedure outlined in Article 12, but may be subject to EEO and/or MSPB proceedings in accordance with EEO/MSPB rules and procedures.

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## **ARTICLE 45. TELEWORK**

The Parties agree that a successful telework program is innovative and cost-effective; and benefits the Agency, its employees, and the public by providing increased productivity, reduced absenteeism, greater employee retention, and expanded recruitment opportunities. The Parties also agree that telework will provide continued operation of services during emergency situations, reduced costs for real estate and facility maintenance, and an enhanced public image.

The Parties are confident that a robust telework program will afford greater job satisfaction for employees by providing flexibility in managing one's time and activities. Telework may improve morale by reducing stress in balancing work and home obligations, and also saving both time and money in costly daily commutes. Telework will also promote a cleaner environment, decreased traffic congestion, and decreased pollution and energy consumption.

The provisions of the Telework Program will be administered in accordance with law and the Agency Telework Policy, dated January 2023, unless the Parties renegotiate any further policy under Article 2, Effective Date and Duration, Section 2.3, Reopener, of the Agreement.

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## ARTICLE 46. LEAVE

### Section 46.1 Purpose

The purpose of this Article is to prescribe the policies and procedures covering the various types of leave. This Article shall be administered in accordance with Title 5, U.S.C., Chapter 63; Title 5, CFR, Part 630, and this Agreement. Eligible employees are entitled to accrue and use leave.

### Section 46.2 Definitions

1. Accrued leave means the leave earned by an employee during the current leave year that is unused at any given time in that year.
2. Accumulated leave means the unused leave remaining to the credit of an employee at the beginning of a leave year.
3. Administrative leave is an administratively authorized absence from duty without loss of pay or charge to leave.
4. Family member for the purpose of annual and sick leave means an individual with any of the following relationships to the employee:
  - A. Spouse, and parents thereof;
  - B. Sons and daughters, and spouses thereof;
  - C. Parents, and spouses thereof;
  - D. Brothers and sisters, and spouses thereof;
  - E. Grandparents and grandchildren, and spouses thereof;
  - F. Domestic partner and parents thereof, including domestic partners of any individual in "B" through "E" of this definition; and
  - G. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
5. Healthcare provider is defined in 5 CFR 630.1202.
6. Leave year means the period beginning with the first day of the first complete pay period in a calendar year and ending with the day immediately before the first day of the first complete pay period in the following calendar year.
7. Medical certificate means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment.
8. Annual leave is a period of approved absence with pay from official duties. It is intended to allow the employee vacation, rest, and recreation. It is also intended for the employee's use in attending to personal or emergency business, to extend the time available to the employee under some other leave programs, and for use with specific military entitlement.
9. Sick leave is a period of approved absence with pay from official duties. It is intended to allow the employee time for physical or mental incapacitation and medical, dental, and optical examinations and/or treatment. It is also intended for the employee's use in family medical situations, bereavement, and for adoption purposes, in accordance with applicable law, rules, regulations, and this Agreement.
10. Paid Parental Leave (PPL) is a period of approved absence with pay from official duties. It is intended to allow eligible employees PPL in connection with a qualifying birth or placement (adoption or foster care).
11. Parental Bereavement Leave (PBL) is a newly implemented leave that provides eligible employees two (2) work weeks (up to 80 hours) of paid leave in connection with the death of a qualifying child.
12. Leave Without Pay (LWOP) is an approved, temporary nonpay status and absence from duty for a specified period, which may be granted to an employee in accordance with applicable law, rules, regulations, and this Agreement.
13. Absence Without Leave (AWOL) is a period of absence without pay for which the employee did not obtain approval or for which a request for leave is denied.

ANNUAL LEAVE ACCRUAL			
Employee type/service	Less than 3 years of service	3 years but less than 15 years of service	15 or more years of service
Full-time employees	1/2 day (4 hours) for each pay period	3/4 day (6 hours) for each pay period, except 1 1/4 day (10 hours) in last pay period	1 day (8 hours) for each pay period
Part-time employees	1 hour for each 20 hours in a pay status	1 hour for each 13 hours in a pay status	1 hour for each 10 hours in a pay status
SICK LEAVE ACCRUAL			
Full-time employees	1/2 day (4 hours) for each biweekly pay period		
Part-time employees	1 hour for each 20 hours in a pay status		

### Section 46.3 Leave Earnings

1. Full-time employees earn leave during each biweekly pay period while in a pay status or in a combination of a pay status and a nonpay status, except as noted in (3) below.
2. Part-time employees earn leave according to their leave category and hours in pay status. Hours in a pay status in excess of their basic working hours are disregarded in computing leave earnings.
3. The accumulation of nonpay status hours during a leave year can affect the accrual of annual leave and sick leave. For example, when a full-time employee with an eighty (80) hour biweekly tour of duty accumulates a total of eighty (80) hours of nonpay status from the beginning of the leave year (either in one (1) pay period, or over the course of several pay periods), the employee will not earn annual and sick leave in the pay period in which that eighty (80) hour accumulation is reached.

### Section 46.4 Annual Leave

The Parties agree that the use of accrued annual leave is the right of the employee, not a privilege, and that annual leave requests will be granted in accordance with the provisions and procedures below.

#### Section 46.4.1

1. The use of annual leave is subject to approval by the supervisor and will be approved and scheduled according to the needs of the work unit and the desires of the employee. Annual leave should be planned and requested with sufficient advance notice to permit careful scheduling of leave for all employees.
2. Leave requests must be submitted, as required, in the Agency's electronic time and attendance system or using the OPM Form 71, Request for Leave or Approved Absence.
3. Employees who become ill while on annual leave, LWOP, or compensatory time may have the time of illness changed to sick leave provided the employee notifies the supervisor on the first day of illness, has sufficient sick leave to cover the requested time off, and otherwise complies with the requirements of this Article.

#### Section 46.4.2

Annual leave may be requested and charged in fifteen (15) minute increments.

#### Section 46.4.3 Scheduling Annual Leave

1. All requests for annual leave should be submitted at least twenty-four (24) hours in advance unless requested pursuant to Section 46.4.7, Unscheduled Annual Leave.
2. Leave requested in advance normally will be granted, except where there are conflicts of scheduling, the absence would be detrimental to the efficiency of the work unit, or an inability to maintain minimal staffing requirements.
3. Employees will be informed of whether their requests for leave have been approved in a timely manner, normally within five (5) business days. When requests are made to use leave on the following day, the response will be made as soon as possible, but no later than the end of the employee's work shift, provided the employee allows sufficient

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time for management to make a determination to approve or deny the leave request. Response to same-day requests to use leave will be made promptly.

4. Approval will be granted on a first-come, first-serve basis and any conflicts will be resolved by EOD. Priority may be given to those employees in jeopardy of leave forfeiture.

#### ***Section 46.4.4 Cancellation of Preapproved Leave***

Management will make a reasonable effort to arrange for accomplishing the employee's work prior to rescinding preapproved leave that would result in the loss of personal expenses to the employee.

#### ***Section 46.4.5 Timely Arrival for Work (Tardiness)***

Employees are expected to report to work on time in accordance with their approved work schedule. Brief and occasional periods of absence of an employee reporting late to work due to factors beyond the employee's control may be excused. When the reasons are determined not to be justifiable, the absence may be handled administratively in any of the following ways:

1. If appropriate, allowing the employee to make up the time equivalent to the period of absence or tardiness as long as the extension would not result in the employee's entitlement to premium pay where he or she would not have otherwise been entitled;
2. Charging the absence to any compensatory time that the employee may have to his or her credit;
3. Charging the absence to annual leave at the employee's request;
4. Placing the employee on LWOP at the employee's request; or
5. Recording the absence as absence without leave.

#### ***Section 46.4.6 Advanced Annual Leave***

The Agency is under no obligation to advance employee's annual leave. If a supervisor is contemplating an employee's request for advanced annual leave, the following (although not all inclusive) will be taken into consideration:

1. The employee is eligible to earn annual leave;
2. The amount of annual leave that may be advanced is limited to the amount of annual leave an employee would accrue in the remainder of the leave year;
3. There is no reason to believe the employee will not return to work for a sufficient period of time to repay the advanced leave after having used the leave;
4. The employee is not subject to leave restriction or has a satisfactory leave usage record; or
5. The employee has demonstrated a history of responsible leave usage.

If an employee has been granted advanced annual leave and separates from the federal service, he/she must repay the advance by subsequent leave accruals, a cash payment (arranged with and agreed upon by the Agency), or a deduction from any subsequent pay due.

#### ***Section 46.4.7 Unscheduled Annual Leave***

1. In the occasional event that the need for leave cannot be reasonably anticipated, the employee shall attempt to contact the immediate supervisor or designated official(s) to request leave for the unscheduled absence by calling as soon as possible, but no later than within one (1) hour after the start of the employee's normal workday.
2. If the supervisor or designated official(s) are not available, the employee may utilize voice mail, email, or other methods, as determined by the supervisor, to notify them of the need for unscheduled leave.
3. The submission of an email or voice mail request for leave does not constitute approval of the employee's absence. The request must be approved by the supervisor or designated official.
4. If the employee's request for leave cannot be granted, the supervisor or designated official(s) will provide such notification. In these instances, the provisions in Section 46.4.3 of this Article apply.

#### ***Section 46.4.8 Annual Leave for Religious Observance/Holidays***

Upon advance notice, an employee may be granted annual leave for religious observances and/or holidays.



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For additional employee option(s), refer to Section 46.18.

## **Section 46.5 Sick Leave**

The Parties agree that the use of sick leave is a benefit provided to the employee and should be used by employees in accordance with proper leave procedures and pursuant to 5 CFR § 630.401.

### ***Section 46.5.1***

Sick leave may be requested and granted in fifteen (15) minute increments.

### ***Section 46.5.2 Scheduling Sick Leave in Advance***

1. Sick leave must be submitted, as required, in the Agency's electronic time and attendance system or using the OPM Form 71, Request for Leave or Approved Absence. The employee must request advance approval for sick leave for the purpose of receiving medical, dental, or optical examination or treatment, and to the extent possible, for the purposes described in 5 CFR § 630.401 (a)(3), (4), and (6).
2. Sick leave requests not submitted at least twenty-four (24) hours in advance, will be processed pursuant to Section 46.5.3, Unscheduled Sick Leave.

### ***Section 46.5.3 Unscheduled Sick Leave***

1. If the need for leave cannot be anticipated, the employee shall attempt to contact the immediate supervisor or designated official to request unscheduled (sometimes called emergency) sick leave by calling as soon as possible, but no later than one (1) hour after the start of the employee's normal workday.
2. If the supervisor or designated official(s) are not available, the employee may utilize voice mail, email, or other methods, as determined by the supervisor, to notify them of the need for unscheduled sick leave. Failure to give notice of an unanticipated need for sick leave within one (1) hour of the time established to report for duty will not, in itself, be a reason to deny sick leave if the employee is otherwise entitled to such leave.
3. Employees have the responsibility to ensure the supervisor is notified of their need for unscheduled sick leave. In rare situations, another person may contact the supervisor on behalf of the employee.
4. With supervisory approval, when an employee is on extended sick leave, arrangements may be made so the employee is not required to call in daily. If arrangements are not made and approved by the supervisor, the employee is responsible for contacting the supervisor on each day that they are requesting leave, in accordance with this Section. An employee who expects to be absent for more than one (1) day will inform the supervisor or designated official(s) of the expected date of return to duty or of any change.

### ***Section 46.5.4 Approval***

In accordance with applicable law, regulation, and this Agreement, the Agency must approve an employee's request for sick leave when the employee:

1. Receives medical, dental, or optical examination or treatment;
2. Is incapacitated for the performance of his or her duties by physical or mental illness, injury, confinement, pregnancy, or childbirth;
3. Provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment;
4. Provides care for a family member with a serious health condition;
5. Makes arrangements necessitated by the death of a family member or attends the funeral of a family member;
6. Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease; or
7. Must be absent from duty for purposes relating to his or her adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

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#### **Section 46.5.5 Medical Evidence**

1. Medical documentation will not ordinarily be required of an employee absent on sick leave for three (3) consecutive workdays or less, unless the supervisor suspects the employee is engaging in abuse of such leave. Medical documentation will normally be required for leave usage in excess of three (3) consecutive workdays.
2. If actual medical attention is not required, the supervisor may consider an employee's self certification as to the reason for his or her absence as administratively acceptable evidence, regardless of the duration of the absence.
3. If medical documentation is required, it must include that the employee was incapacitated for duty (or words to that effect), the employee (or family member) was under the care/treatment of a physician, authorized practitioner, other authorized health care provider, or was attending a medical examination/appointment, the date(s) of the absence, a return to duty date, and an official signature or stamp, including the date.  
Any additional documentation, if necessary, will be requested on a case-by-case basis.
4. The Agency will treat as confidential any medical information provided by an employee to any agent or representative of the Agency in support of a request for leave. The Agency may disclose such information only for purposes of making informed management decisions and only to individuals who have a need to know for purposes consistent with applicable laws, rules, regulations, and this Agreement. Employees have an option to submit medical documentation directly to the Servicing Human Resources Office (SHRO) and/or the Health Unit. Employees are responsible for notifying their appropriate supervisor/manager regarding the submission of documentation that is on file for verification.
5. An employee with a chronic medical condition that does not require medical treatment, but does result in periodic absences from work, should not be required to furnish a health care provider certificate on a continuing basis if the employee is:
  - A. Not on leave restriction;
  - B. Requesting leave in accordance with the provision of this Article; and
  - C. Provides, if requested, an administratively acceptable medical documentation every year that clearly states the continuing need for periodic absences. Supervisors may periodically require further medical documentation to substantiate that the condition still exists, or a particular absence is related to the condition.

#### **Section 46.5.6 Substitution of Sick Leave**

An approved absence, which would otherwise be chargeable to sick leave, may be charged to annual leave or compensatory time off if requested by the employee and there is no just cause for the Agency to deny such a request. At the supervisor's discretion, an absence that would otherwise be chargeable to sick leave may be charged to LWOP. Only sick leave may be used for leave requests under the Federal Employee Family Friendly Leave Act.

#### **Section 46.5.7 Advanced Sick Leave**

1. Up to two hundred forty (240) hours of sick leave may be advanced by the Agency to a full time employee (pro-rated for part-time employees) as follows:
  - A. Who is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth;
  - B. For a serious health condition of the employee or a family member;
  - C. When the employee would, as determined by the health authorities having jurisdiction or by a healthcare provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease;
  - D. For purposes relating to the adoption of a child; or
  - E. For the care of a covered service member with a serious injury or illness, provided the employee is exercising his or her entitlement under 5 U.S.C. 6382(a)(3).
2. Up to one hundred four (104) hours of sick leave may be advanced by the Agency to a full time employee (pro-rated for part-time employees) as follows:
  - A. When he or she receives medical, dental or optical examination or treatment;

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- B. To provide care for a family member who is incapacitated by a medical or mental condition or to attend to a family member receiving medical, dental, or optical examination or treatment;
  - C. To provide care for a family member who would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease; or
  - D. To make arrangements necessitated by the death of a family member or to attend the funeral of a family member.

All requests for advanced sick leave must be submitted to the servicing Employee Relations Area (ERA).

- 3. The Agency is under no obligation to advance employees sick leave. If a supervisor is contemplating an employee's request for advanced sick leave, the following (although not all inclusive) should be taken into consideration:
  - A. The employee is eligible to earn sick leave;
  - B. The employee's request does not exceed two hundred forty (240) hours (for temporary employees only the amount to be earned during the period of temporary employment if appropriate);
  - C. There is no reason to believe the employee will not return to work after having used the leave for a sufficient period to repay the advanced leave;
  - D. The employee has provided acceptable medical documentation of the need for advanced sick leave that covers the entire period where advanced sick leave is requested;
  - E. The employee is not subject to leave restriction and has a satisfactory leave usage record; and
  - F. The employee has demonstrated a history of responsible leave usage.

## **Section 46.6 Leave for Family Purposes**

### ***Section 46.6.1 Parental Leave***

- 1. Consistent with applicable law and regulation:
  - A. Sick leave may be used for time due to delivery, childbirth, and recuperation, in accordance with applicable laws, rules, regulations, and other provisions of this Article.
  - B. Annual leave, LWOP as approved, or accrued compensatory time may be requested and used by the employee for a period of adjustment or to arrange for childcare.
  - C. Requests for leave under the FMLA will be processed in accordance with Section 46.6.2.
- 2. Normally, no later than thirty (30) days in advance of expected use, the employee is responsible for requesting parental leave, including the type of leave, approximate dates, and anticipated duration.
- 3. The Agency will normally provide leave approvals/denials requested pursuant to this Section within ten (10) working days after receipt of the request.

### ***Section 46.6.2 Family and Medical Leave Act (FMLA)***

- 1. In accordance with 5 CFR 630, Subpart L, employees are entitled up to a total of twelve (12) administrative workweeks of unpaid leave during any twelve (12) month period for one or more of the following reasons:
  - (a) The birth of a son or daughter of the employee and the care of such son or daughter;
  - (b) The placement of a son or daughter with the employee for adoption or foster care and the care of such son or daughter;
  - (c) 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
  - (d) 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.
  - (e) Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

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2. To be eligible for leave under this Section, employees must have completed at least one (1) year of civilian service with the government. The twelve (12) months of service to qualify need not be recent or consecutive.  
  
Temporary and intermittent employees are generally excluded from the coverage. (Refer to Section 46.7 of this Article).  
  
The law prohibits any interference with the employee's right to take leave through coercion, intimidation, or threat.
  3. The employee may substitute annual leave, sick leave, accrued compensatory time for approved FMLA leave without pay, or credit hours, as appropriate.
  4. When leave is being requested for a serious health condition or to care for a seriously ill child, spouse, or parent, the employee may request to take leave intermittently or on a reduced leave schedule. When a reduced leave schedule would be of benefit to an employee with a serious medical condition, the employee should discuss this with the immediate supervisor.
  5. If an employee takes leave intermittently or on a reduced leave schedule that is foreseeable based on planned medical treatment or recovery from a serious health condition, the Agency may place the employee temporarily in an available alternative position for which the employee is qualified and that can better accommodate recurring periods of leave pursuant to 5 CFR § 630.1205.
  6. An employee using unpaid leave under this Section is entitled to return to the same or equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment. Under the law, this use of leave may not result in the loss of any employment benefit accrued before the leave began.
  7. To apply for FMLA the following procedure must be followed:
    - A. An employee may invoke his or her entitlement to leave under FMLA by submitting, as required, in the Agency's electronic time and attendance system or using the OPM Form 71, Request for Leave or Approved Absence, to their immediate supervisor or designee.
    - B. The employee must then submit a completed form WH-380-E for a serious health condition for the employee, or WH-380-F for a serious health condition for a family member, to their servicing ERA, within fifteen (15) days of invoking FMLA.
    - C. The employee will be notified by their supervisor or his or her designee if their request for FMLA is approved or if there are any deficiencies with regard to their request.
  8. Approval or disapproval letters will be given to the requesting employee normally within five (5) working days, but no more than ten (10) calendar days, of the receipt of a properly completed request. The letter will include as follows:
    - A. If the FMLA request is approved or disapproved. If disapproved, the reasons for disapproval will be provided.
    - B. Confirmation of timeframes for FMLA entitlement (twelve (12) months from the invocation date or exhaustion of up to four hundred eighty (480) hours of leave), whichever comes first.
    - C. If FMLA leave is intermittent or continuous, including the estimated frequency and duration if for intermittent usage, and the dates if for continuous usage.

### ***Section 46.6.3 Paid Parental Leave***

Paid Parental Leave may be granted in connection with a qualifying birth or placement (for adoption or foster care). The Federal Employee Paid Leave Act (FEPLA) makes paid parental leave available to certain categories of federal civilian employees. As a result, FMLA provisions were amended in Title 5 U.S.C. to provide up to twelve (12) weeks of paid parental leave to covered federal employees in connection with the birth or placement (for adoption or foster care) of a child occurring on or after October 1, 2020.

Paid parental leave granted in connection with a qualifying birth or placement under FEPLA is substituted for unpaid FMLA leave and is available during the 12-month period following the birth or placement. In order to be eligible for paid parental leave under FEPLA, a federal employee must be eligible for FMLA leave under 5 U.S.C. 6382(a)(1)(A) or (B), and must meet FMLA eligibility requirements.

Under FEPLA, an employee may not use any paid parental leave unless the employee agrees in writing, before commencement of the leave, to subsequently work for the applicable employing agency for at least 12 weeks. This 12-week work obligation begins on the employee's first scheduled workday after such paid parental leave concludes.

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## **Section 46.7 Intermittent Absence Program at the National Processing Center**

1. The Agency recognizes that serious personal and family health conditions may affect any employee, regardless of his/her leave-earning status. Employees who are classified as “Intermittent” do not earn leave, are not eligible for leave, and are not eligible for entitlements under the FMLA.
2. Employees working an intermittent work schedule will be allowed to apply for an excused absence due to a serious health condition for themselves or a family member. A serious health condition is an illness, injury, impairment, or physical/mental condition that makes an employee unable to perform any one or more of the essential functions of his/her position. A family member is defined as the son, daughter, spouse, or parent of the employee. This practice will be referred to as the Intermittent Absence Program (IAP).
3. An employee must have accrued at least twelve (12) months of federal service. There will not be a “minimum hours” worked requirement in order to receive approved absences under this program.
4. Employees with qualifying circumstances and health conditions may apply and be accepted into the IAP. The Certification of Health Care Provider, NPC-1185 (IAP), or equivalent form, and any supporting documentation are filtered through the servicing ERA.
5. Once IAP is approved, the employee does not need to provide medical certification/documentation for each instance of absence requested under that IAP. A Form NPC- 1184-IAP, or equivalent form, must be submitted for each period of absence. The supervisor will sign these forms, return a copy to the employee, and retain the original for record-keeping purposes.
6. The management official will authorize absences during scheduled work hours for employees with an approved IAP.
7. IAP approved employees must identify each qualifying absence as an IAP absence at the time of the occurrence for the absence to be approved under the IAP.
8. The total amount of excused hours an employee is granted during a specified timeframe (not to exceed four hundred eighty (480) hours) will be prorated based on the employee’s average number of hours worked per week from the previous fiscal year. For example, if an employee worked twenty (20) hours per week on average during the previous fiscal year, then the employee would be granted  $[(20/40) \times 480] = 240$  hours.
9. Management will make every effort to modify an employee’s biweekly hours of work, without reducing the number of hours an employee is normally scheduled. Such modifications should be done prior to releasing the final schedule to accommodate routine, recurring appointments, treatments, etc., in order to not create an additional hardship for the IAP approved employee. Where such modifications cannot be made because of specific workload requirements, and an employee’s individual recurring absence causes significant hardship on the operations within the branch, every effort will be made to provide the IAP approved employee alternate duties during the employee’s IAP certification period.

## **Section 46.8 Leave Without Pay**

### ***Section 46.8.1***

LWOP must be requested in the same manner as annual leave and sick leave. The decision to approve or disapprove LWOP is at the sole discretion of the Agency. However, nothing precludes an employee from requesting LWOP for any purpose.

### ***Section 46.8.2***

The employee may request short periods of LWOP not to exceed eighty (80) hours in the leave year, without the requirement to exhaust accrued leave. The Agency may grant longer periods of LWOP; however, the employee may be asked to exhaust his or her appropriate existing leave first. Requests for LWOP will be given serious consideration and will not be denied arbitrarily.

Denials of requests for LWOP will be provided to the employee in writing.

### ***Section 46.8.3***

An employee in a LWOP status for the last hour of the workday immediately before a holiday and in the first hour of the workday immediately following a holiday is not entitled to regular pay for the holiday.

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#### **Section 46.8.4**

In accordance with applicable laws, rules, and regulations, approval of LWOP is mandatory for the following:

1. Disabled veterans are entitled to LWOP, if requested, for necessary medical treatment;
2. Members of the armed forces reserves and National Guard are entitled to LWOP, if requested, when ordered to military training duties if the absence is not covered by military leave;
3. Employees are entitled to twelve (12) administrative workweeks of LWOP under FMLA, if supported by administratively acceptable evidence;
4. Employees receiving compensation payments/benefits under the Office of Workers' Compensation Programs; and
5. An employee who returns to duty after LWOP will be returned to the position held or a similar position.

#### **Section 46.8.5**

The Agency agrees to consider LWOP, for duration up to one (1) year, for a bargaining unit employee selected to a full-time position of the AFGE Union. LWOP may be renewed, at the discretion of the Agency, upon request in writing from the employee that he/she wishes to continue in a LWOP status. Upon return to duty, the employee will be restored to a job in his/her permanent grade and pay for which he/she qualifies. Any employee who is placed on LWOP under this provision remains a federal employee and is bound by all federal ethics restrictions.

#### **Section 46.9 Funeral Leave/Bereavement**

Upon request, an employee may be granted annual and/or sick leave during workdays to arrange for or attend the funeral or memorial service, or to mourn the death of a family member. The leave need not be consecutive, but the employee shall provide the supervisor justification for the requested nonconsecutive days.

#### **Section 46.10 Parental Bereavement Leave**

An eligible employee is entitled to a total of two (2) workweeks (up to 80 hours) of Parental Bereavement Leave (PBL) (separate from an employee's annual or sick leave balance) due to the death of a qualifying son or daughter of the employee. The death of an employee's child triggers the law's one-time entitlement to two (2) workweeks of bereavement leave in connection with that death, which must be used within the single 12-month period that is linked to the given child's death.

The following employees are eligible for PBL:

- a. The individual is (i) covered under the title 5 annual and sick leave program (i.e., an "employee" as defined in 5 U.S.C. 6301(2)) or (ii) a DOD overseas teacher 2 holding a teaching position defined in 20 U.S.C. 901 (but excluding any individual employed by the government of the District of Columbia, the Government Accountability Office, or the Library of Congress);
- b. The individual is serving under a permanent or term appointment (i.e., does not have a temporary appointment of 1 year or less);
- c. The individual has an established part-time or full-time work schedule (i.e., does not have an intermittent work schedule as described in 5 CFR 340.401 and 340.403); and
- d. The individual has completed at least 12 months of service as an employee (as defined in 5 U.S.C. 2105) of the Government of the United States, including service with the United States Postal Service, the Postal Regulatory Commission, and a nonappropriated fund instrumentality as described in Section 2105(c).

A covered son or daughter is a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who was under 18 years of age at the time of death or 18 years of age or older and incapable of self-care because of a mental or physical disability.

##### **Section 46.10.1 Leave for Bone Marrow and Organ Donation**

Upon request, subject to certification by a physician, leave-approving officials will approve bone marrow or organ donor leave for employees who serve as living donors for bone marrow, organ and tissue donation, and transplantation. The use of bone marrow or organ donor leave can cover time off for activities, such as donor screening, the actual medical procedure, and recovery time. Leave approving officials will approve:



1. Up to seven (7) workdays of absence without charge to leave or loss of pay for each donation by employees participating as living bone marrow donors.
2. Up to thirty (30) workdays of absence without charge to leave or loss of pay for employees participating as living organ or tissue donors.

#### **Section 46.10.2**

The length of absence from work can vary depending on the medical procedure involved in the donation. Therefore, for longer periods of incapacitation, leave approving officials should normally approve annual and/or sick leave or LWOP in combination with the maximum amounts of excused absence specified in the above Section 46.10.1 (1) and (2).

#### **Section 46.11 Blood Donations**

Excused absence for blood donation must be approved in advance. An employee may be granted a reasonable amount of time up to two (2) hours of excused absence for purposes of donation and recuperation associated with giving blood, upon the discretion of the supervisor. The donation of blood is not to be used as a means for early release from duty without supervisory approval.

Additional administrative leave for this purpose may be approved in unusual circumstances, if needed.

#### **Section 46.12 Court Leave**

1. In accordance with laws and regulations, a leave-earning employee is entitled to court leave for the following:
  - A. Jury duty in a federal, state, or municipal court; or
  - B. Serving as a witness, in a nonofficial capacity, for the United States, the District of Columbia, or a state or local government.
2. It is mandated by statute that the compensation of an employee shall not be reduced because of jury duty. Employees granted leave for jury duty are entitled to the same compensation they would otherwise have received including any premium pay and differentials. A nightshift employee who performs jury duty during the day is entitled to receive payment of night differential for his or her regularly scheduled night tour of duty.

An employee serving on a jury for five (5) weekdays, with a regular tour of duty or schedule that includes Saturdays, Sundays, or both, may be granted court leave and paid premium pay and differentials for the weekend days that are a part of his or her regular tour of duty. In addition, an employee should not be expected to perform regular duties on weekends while on jury duty for five (5) weekdays. However, if an employee is excused from jury duty on a weekday, he/she should work a weekend day in place of excused jury duty.

3. An employee on court leave who is excused from court prior to the end of his/her scheduled workday may continue on court leave if expense, distance, or time involved in travel creates a hardship for the employee to return to duty.
4. Employees may keep reimbursements received for mileage, parking, or required overnight stay to the extent consistent with laws and regulations.
5. If an employee is on annual leave when called for jury service, court leave may be substituted for the annual leave.
6. The employee must furnish the supervisor with a copy of the summons/order.

#### **Section 46.13 Voting and Voter Registration**

Subject to the additional considerations listed below, the Agency will adhere to the following policy on administrative leave for voting-related activities.

The Agency will:

- Allow employees to use up to four (4) hours of administrative leave for voting in connection with each federal general election day. The administrative leave may be used for voting on the federal general election day or for early voting (i.e., voting prior to federal general election day, as authorized by their jurisdiction);
- Allow employees to use up to four (4) hours of administrative leave for voting in connection with each election event (including primaries and caucuses) at the federal, state, local (i.e., county and municipal), tribal, and territorial level that does not coincide with a federal general election day (If an election simultaneously involves more than one (1) level, it is considered to be a single election event). This administrative leave may be used for voting on the

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established election day or for early voting, whichever option is used by the employee with respect to an election event;

- For federal special Congressional elections not held on the date of a federal general election, agencies should allow employees to use up to four (4) hours of administrative leave for voting. This administrative leave may be granted for voting on the established date of a special election or for authorized early voting in connection with that election.
- Allow employees to use up to four (4) hours of administrative leave per leave year to serve as a nonpartisan poll worker or to participate in nonpartisan observer activities at the federal, state, local (i.e., county and municipal), tribal, and territorial level. A “leave year” begins on the first day of the first pay period commencing on or after January 1 of the given year and ends on the day before the first day of the next leave year. This leave is in addition to any administrative leave an employee uses to vote.
- Employees are required to obtain prior approval from their supervisor before using the authorized administrative leave so that the use of this leave does not significantly disrupt Agency operations.
- If an employee spends less than four (4) hours to vote, only the needed amount of administrative leave is to be granted. An employee is responsible for providing sufficient information to support the amount of administrative leave requested.
- The Agency will strive to accommodate employee leave requests by making necessary operational adjustments.
- The Agency will inform all employees of the availability of administrative leave for voting and nonpartisan poll worker or nonpartisan observer purposes.
- Administrative leave may not be used during a nonworkday or during overtime work hours outside the tour of duty established for leave charging purposes.
- Administrative leave may be used for any travel time to and from the employee’s voting poll location.
- An employee may use administrative leave for voting in connection with each covered election event in which the employee participates by voting. However, an employee is limited to four (4) hours of administrative leave for voting per election event.
- An employee may use up to four (4) hours of administrative leave per leave year for the purpose of serving as a nonpartisan poll worker or nonpartisan observer, including training periods. If those duties require the employee to be absent for a longer period, the employee must use annual leave (accrued or advanced), earned compensatory time off, or credit hours earned under a flexible work schedule. An employee may also request leave without pay according to Agency internal policies and any applicable collective bargaining agreement.

#### **Section 46.14 Military Leave**

Military leave will be granted in accordance with 5 U.S.C. § 6323. Additional information can be located at OPM.gov.

The Agency will comply with the provisions of the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. 4301.

#### **Section 46.15 Emergency-Related Absences**

For emergency situations, the Agency will follow the policies and procedures as prescribed by the OPM. Administrative leave may be granted in situations that prevent significant numbers of employees from reporting for work on time or that require closing all or part of the Census Bureau. Other emergency situations may occur resulting in unscheduled leave, telework, early dismissal, staggered departure, or closure.

Designated emergency employees may be required to report to work even when a broader administrative leave authorization is issued.

If an excused absence is authorized in an emergency situation at a time when an employee is already in some other pay status (sick leave, annual leave, etc.), the employee’s time may be converted to the excused absence when appropriate.

#### **Section 46.16 Voluntary Leave Transfer Program**

The Voluntary Leave Transfer Program (VLTP) is a program where employees may voluntarily donate annual leave to other employees to help offset hardships resulting from medical emergencies affecting the employee or a family member of the employee. Section 46.16(10) of this Article details additional situations where the VLTP is appropriate.



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1. The Agency and Union agree to follow OPM regulations, procedures, and definitions that authorize a leave transfer program, as well as applicable public laws, regulations, DOC policies, and this Agreement.
  2. In order to be a leave transfer recipient, an employee's unpaid absence because of a medical emergency must be or anticipated to be at least twenty-four (24) work hours in duration. The unpaid absence does not have to be continuous. For a part-time employee or an employee on an uncommon tour of duty, the period of absence should be at least thirty (30) percent of the average number of hours worked in the employee's biweekly scheduled tour.
  3. Medical emergencies of an approved recipient must meet minimum criteria established in OPM regulations.
  4. Employees who wish to be leave recipients must complete the appropriate application form (OPM 630, Application to Become a Leave Recipient Under the Voluntary Leave Transfer Program) and submit it through their servicing HR office. If an employee is incapacitated and cannot submit an application, a personal representative, designated in writing, may do so on his or her behalf.
  5. Leave-transfer recipients or their designated representative may sign a release authorizing the servicing HR office to publicize their need for donations. If authorized, the servicing HR office will maintain a record that potential donors can review. The servicing HR office will post the recipient's name and other authorized information at a designated location on the appropriate bulletin boards or on the Census Bureau internal website.
  6. If the recipient's application is approved, the servicing HR office will notify the applicant of the approval within ten (10) workdays or less of receipt and inform the recipient that approved donors may transfer annual leave to the recipient's leave account.
  7. If the recipient's application is disapproved, the servicing HR office will notify the applicant in writing of the disapproval within ten (10) workdays or less of receipt and any reasons for disapproval.
  8. In accordance with 5 CFR 630.908 (a) and (b):
    - (a) In any one leave year, a leave donor may donate no more than a total of one-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the donation is made.
    - (b) In the case of a leave donor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year under 5 U.S.C. 6304(a), the maximum amount of annual leave that may be donated during the leave year shall be the lesser of:
      - (1) One-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the donation is made; or
      - (2) The number of hours remaining in the leave year (as of the date of the transfer) for which the leave donor is scheduled to work and receive pay. Leave donated must be in whole-hour increments.
  9. Leave transfer recipients and/or their representatives are entitled to a reasonable amount of time (consistent with workload requirements) to find donors, with prior supervisory approval.
  10. An employee, who is being involuntarily separated due to a RIF, a transfer of function, or an adverse action resulting from the employee's decision to decline relocation, may use donated annual leave to remain on the Agency's rolls to establish initial eligibility for immediate retirement (including discontinued service or voluntary early retirement) and for continuance of health benefits. Operating units have the authority to approve the use of any or all donated annual leave made available to the employee, as of the effective date of the RIF or relocation, for the above purposes.
  11. The Agency will maintain strict confidentiality of all files in accordance with law, rule, or regulation.

#### **Section 46.17 Visit to the Onsite Health Unit**

Where the employee's facility has an on-site occupational Health Unit and it becomes necessary for an employee to use their services, the employee may be excused for up to one (1) hour without charge to leave, with supervisory approval. When the absence exceeds one (1) hour, the employee will contact his/her supervisor immediately to request additional time to cover the additional absence, unless the employee is incapacitated from being able to communicate.

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### **Section 46.18 Accommodation for Religious Observances**

The Agency will make every effort to accommodate the practice of religious beliefs by individual employees consistent with Agency needs. An employee whose personal religious beliefs require the abstention from work during certain periods of the workday or workweek, may request to work extra hours and accumulate them so that he/she can use them later without using personal leave. The extra hours can be earned before or after the time off is taken.

If you accumulate religious compensatory time and do not use it, you will not be paid at the overtime rate for it.

If you leave the Department, you will be paid at your base rate for unused religious compensatory time hours.

### **Section 46.19 Other Circumstances**

The above reasons for granting leave are not all-inclusive and there may be other situations supporting a request for the granting of such leave. Such requests shall be considered based on the reasons presented at the time. The Agency may require documentation as appropriate to support the reasons for and/or the duration of such leave requests.

### **Section 46.20 Absence Without Leave (AWOL)**

AWOL is based on the supervisor's determination that no form of leave (annual, sick, LWOP, etc.) has been or should be approved for the absence based on existing evidence. AWOL can be converted to appropriate leave when a supervisor receives and is satisfied with documentation justifying the absence.

When the Agency determines that it will charge an employee AWOL, it will notify the employee either verbally or in writing. The notification will be issued to the employee, and include the reason for charging AWOL, and the date and time period in question.

AWOL is not disciplinary in nature, but may be the basis for disciplinary action.

### **Section 46.21 Leave Abuse**

Where the Agency has sound reason to believe that an employee is abusing the use of sick leave, unscheduled annual leave, or other forms of leave as provided for within this Article, the employee shall be counseled by his or her supervisor concerning such abuse. If such counseling is unsuccessful and the employee continues to abuse the specified leave, the employee may be placed on leave restriction. Leave restriction is a written notice issued to the employee that all subsequent specified leave absences must be supported by credible evidence justifying such absences.

The leave usage of all employees under leave restriction will be reviewed at least every ninety (90) days and a written decision made to either continue or lift the restriction. If the review shows improvement, the supervisor will normally lift the restriction.

The use of leave for scheduled medical appointments caused by recurring and previously documented medical conditions normally will not be considered a leave pattern that indicates an abuse of leave.

Leave balances should not be the sole factor for determining leave abuse.

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## ARTICLE 47. FURLOUGH

### Section 47.1 Furlough Definitions

1. "Administrative furlough" is a planned event by the Agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any budget situation other than a lapse in appropriations. Furloughs that would potentially result from sequestration would generally be considered administrative furloughs.
2. "Shutdown furlough" (also called an emergency furlough) occurs when there is a lapse in appropriations and can occur at the beginning of a fiscal year, if no funds have been appropriated for that year or upon expiration of a continuing resolution, if a new continuing resolution, or appropriations law, is not passed. In a shutdown furlough, the Agency would have to shut down any activities funded by annual appropriations that are not excepted by law. Typically, any Agency will have very little to no lead time to plan and implement a shutdown furlough.
3. "Exempt" from furlough means employees who are not affected by a lapse in appropriations. This includes employees whose functions are not funded by annually appropriated funds. Employees performing those functions will generally continue to be governed by the normal pay, leave and other civil service rules.
4. "Excepted employees" are employees whose work is funded through annual appropriations but are not furloughed because they are performing tasks that, by law, are allowed to continue during a lapse in appropriations. Excepted employees include employees who are performing emergency work involving the safety of human life or protection of property, or certain other types of excepted work. Emergency employees (e.g. working during severe weather conditions, HVAC issues, power failures, etc.) are not automatically deemed excepted employees for the purpose of shutdown furloughs. Each Agency must determine which employees are excepted employees based on the law.
5. "Non-Excepted employees" whose work is funded through annual appropriations but is not designated as excepted work are barred from working during a shutdown, other than to perform minimal activities as necessary to execute an orderly suspension of Agency operations related to nonexcepted activities.
6. "Authorized Absence" means an absence from work approved by management during a shutdown furlough.

#### Section 47.1.1

This Article applies only to those employees covered under 5 CFR § 752.401(c). Except as provided for under 5 CFR § 752.404(d)(2), the Agency will take no action to furlough bargaining unit employees until the Union has been notified of the proposed furlough.

The Parties agree that, with the exception of shutdown furloughs, all other furloughs of more than thirty (30) consecutive calendar days or more than twenty-two (22) discontinuous workdays shall follow the provisions of Article 48, Reduction in Force.

### Section 47.2 Furlough Notice

An employee will be given notice of administrative furloughs at least thirty (30) days in advance of the effective date of a furlough. Advance written notice and an opportunity to answer are not required for a furlough without pay due to unforeseeable circumstances (i.e., sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities).

The furlough notice will contain the following:

1. State the specific reason for the proposed furlough;
2. Inform the employee of his or her right to review the material, which is relied upon to support furlough notice; and
3. Inform the employee of his or her appeal rights according to applicable laws, rules, statute, and the terms of this Agreement and their right to respond.

### Section 47.3 Volunteers

When it is necessary to furlough some, but not all employees in an organizational unit, the Agency, may solicit volunteers at the affected work site. The volunteers may request leave without pay (LWOP) for the furlough days. If a sufficient number of volunteers do not come forth, then the Agency will select employees for furlough utilizing the lowest service computation date (SCD). Employees not furloughed must be qualified to perform the functions (as determined by the Agency) that are to continue to be performed during the period of furlough.

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## **Section 47.4 Scheduling Furlough Days**

When the Agency has made a decision to furlough employees for a specified number of days during a specified period of time, employees may be provided an opportunity to submit a schedule identifying their preferences in accomplishing the necessary number of days off. Scheduling conflicts amongst employees will be resolved by utilizing seniority.

These schedules may be accommodated as much as possible, giving due consideration to workload and staffing requirements. The Agency's operational needs will take precedence.

## **Section 47.5 Furlough Response**

The employee will have seven (7) days to respond to the furlough notice.

### ***Section 47.5.1***

Once the employee has submitted a written and/or oral reply, the Agency will issue a decision in writing. The written decision will be delivered to the employee on or before the effective date of the furlough.

## **Section 47.6 Service Credit**

An employee will not lose service credit for furlough time of less than thirty (30) days.

## **Section 47.7 Employee Compensation During Lapse of Appropriation**

Employees (including intermittent employees only for the time they were scheduled) who are furloughed because of a lapse of appropriations shall be retroactively paid and/or otherwise compensated in accordance with law and regulation and the availability of funds if Congress so determines.

## **Section 47.8 Leave During Lapse of Appropriation**

In accordance with appropriate regulations, when an employee is designated to go into furlough status, any annual or sick leave that has been approved is canceled. Canceled or interrupted annual or sick leave is not forfeited but may be used at a later date.

## **Section 47.9 Employee Benefits During a Furlough**

### ***Section 47.9.1 Continuous Furlough***

Health insurance coverage will continue in a nonpay status. The government contribution will continue. The employee will be responsible for their share of any missed premium(s). Upon return to pay status, each pay period, one missed premium along with the employee's current premium will be collected from the salary payment until the employee has paid all missed premium(s).

An employee may request a repayment agreement to the servicing Human Resources Office, so a lesser amount may be deducted for the missed premium portion.

For dental and/or vision insurance, BENEFEDS will generate a bill to employees for premiums when no payment is received for two (2) consecutive pay periods. In order for the employee to continue dental and/or vision coverage, the employee must make payments while in a nonpay status.

Life insurance coverage continues without cost to the employee or Agency. The premium will automatically be deducted, as before, when the employee returns to pay status.

Retirement coverage continues with no cost to the employee.

Flexible Spending Account (FSA) accounts will be frozen if in a nonpay status for greater than a pay period. The enrollee will be notified by FSA when their account is frozen. The account will be activated when the enrollee returns to a pay status and the enrollee will be notified of the adjusted amount to be withheld to account for any missed payments.

Federal Long Term Care Insurance Program (FLTCIP) deductions cease if there are insufficient funds to cover the premium(s). In order for the coverage to continue, the enrollee must make payments directly to FLTCIP.

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For FERS employees, Thrift Savings Plan (TSP) contributions (and the Agency contributions), will stop until the employee is receiving pay once again. If the employee has an outstanding loan, the repayment period will be extended by the number of nonpay pay periods. Employees may make loan payments from their own funds directly to the TSP to avoid additional interest.

#### ***Section 47.9.2 Discontinuous Furlough***

Health insurance coverage will continue in a nonpay status. The government contribution will continue. The employee will be responsible for their share of any missed premium(s). Upon return to pay status, each pay period, one missed premium along with the employee's current premium will be collected from the salary payment until the employee has paid all missed premium(s).

Life insurance and retirement coverage continue with no cost to the employee.

Dental and/or vision, FSA, FLTCIP, and TSP benefits shall continue during discontinuous furloughs. The contributions by the employee shall continue if there are sufficient funds to cover the cost of the benefits.

#### ***Section 47.9.3 Conditions of Employment***

No changes to conditions of employment will be implemented in the bargaining unit during a furlough, except as agreed to by the parties, consistent with Article 16, Mid-term Bargaining.

#### ***Section 47.10 Performance-Related Actions***

Allowances for the effects of a furlough on employees (including part-time and intermittent employees) regarding assigned work will be made when applying the performance appraisal system.

#### ***Section 47.11 Notification to Employees***

The Agency normally will provide sufficient notice of expected return to duty to employees to avoid any instances of employees losing pay and/or being placed in an absence without leave (AWOL) status. Notices advising employees when they should return to work will be tailored to the specific situation e.g. advising employees to monitor the Office of Personnel Management's (OPM) Website <[www.opm.gov](http://www.opm.gov)>, media outlets for notification that the President has signed a continuing resolution or appropriation, etc.

#### ***Section 47.12 Pay for Excepted Employees***

For the purposes of this Article, the term Excepted refers to employees who are excepted from the furlough because they are performing work that, by law, may continue to be performed during a lapse in appropriations.

Employees who are required to report for duty during a lapse of appropriations shall be fully compensated after a new appropriation measure, or continuing resolution is enacted in accordance with law and regulation.

Normally, within seven (7) days of the enactment of new appropriation, excepted employees shall be made whole for any time worked during a funding gap.

##### ***Section 47.12.1 Use of Agency Email During Furloughs***

The Parties agree that employees placed on furlough are not permitted to work during the time of a furlough. However, official Census Bureau communications specific to the furlough are permitted using the Agency email system.

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## **ARTICLE 48. REDUCTION IN FORCE**

### **Section 48.1 General**

#### ***Section 48.1.1***

The provisions of this Article establish or specify the procedures that apply to the implementation of any Agency decision when a Reduction In Force (RIF) is necessary and specify actions the Agency will take to assist bargaining unit employees who are impacted.

#### ***Section 48.1.2***

A RIF occurs when an Agency releases a competing employee from his or her competitive level by furlough for more than thirty (30) consecutive calendar days, or more than twenty-two (22) discontinuous workdays within one (1) year from the beginning of a furlough, separation, demotion, or reassignment requiring displacement, when the release is required because of the following:

- A. Lack of work;
- B. Shortage of funds;
- C. Insufficient personnel ceiling;
- D. Reorganization;
- E. The exercise of reemployment right or restoration rights; or
- F. Reclassification of an employee's position due to erosion of duties when such action will take effect after the Agency has formally announced a RIF in the employee's competitive area and when the RIF will take effect within one hundred eighty (180) days.

#### ***Section 48.1.3***

RIFs will be accomplished in accordance with all applicable provisions of Title 5 U.S.C., Title 5 CFR, departmental policy, and the provisions outlined in this Agreement.

#### ***Section 48.1.4***

In accordance with 5 CFR §351.705, excepted service employees cannot be assigned to a position in the competitive service, and competitive service employees cannot be assigned to a position in the excepted service.

### **Section 48.2 Avoidance of RIF**

#### ***Section 48.2.1***

To the extent that is practicable and not prohibited by law and without interfering with the accomplishment of the Agency's mission, the Agency will resort to a RIF after all other means of managing the cause for considering a RIF have been considered.

#### ***Section 48.2.2***

To minimize the adverse impact on employees and prior to specific notices being issued, the Agency shall (whenever possible) accomplish the goals otherwise achieved by a RIF through attrition, placement of employees in funded vacant positions, and other cost-reduction efforts before abolishing positions.

### **Section 48.3 Information to Be Provided to the Union**

The Agency will notify the Union of any RIF as far in advance of notification to affected employees as is possible. The information to be provided to the Union will include the following:

1. The specific reasons why the Agency considers a RIF to be necessary;
2. The competitive area in which the RIF will be conducted;
3. The competitive levels to be initially affected;
4. The number and work location of employees involved;
5. The proposed effective date;

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6. All actions considered (including a cost study), adopted, or rejected before deciding to conduct a RIF, and the reasons for the adoption or rejection;
  7. Information regarding surplus positions as soon as practicable, but not later than ten (10) workdays prior to employees' receiving a specific RIF notice;
  8. On a continuing basis, provide the Union with the latest information available regarding any applicable action(s). This shall include at least a weekly briefing session. The information provided shall be that information available to the Agency at the time, which has a reasonable bearing on the impact and/or implementation of any RIF; and
  9. In addition to information relating to the Agency's reasons for the RIF, the following information will be provided to the Union as far in advance of the issuance of specific notices to affected employees:
    - A. RIF implementation plan;
    - B. Organizational components and competitive levels affected; and
    - C. Effective dates of each action.

#### **Section 48.4 Employee Information**

The Agency shall provide complete information needed by employees to fully understand the RIF and why they are affected. Specifically, the Agency shall:

1. Inform affected employees of any RIF. Specifically, the Agency shall inform all affected employees of plans or requirements it is acting upon, the extent of the affected area, the regulations governing the planned action, and the kinds of assistance provided for affected employees;
2. Establish a RIF Information Center to facilitate the dissemination of information to affected employees. The center's hours of operation shall be established to accommodate any off-shift employees affected by the RIF. Any employee affected by a RIF shall be allowed a reasonable amount of time to visit the RIF Information Center and use its facilities. Each employee receiving a specific RIF notice will be notified of the center's existence and the services offered;
3. Offer each affected employee a personal interview with a personnel specialist at the center. First priority, however, will be given to those receiving specific notice of separation. The purpose of such interviews shall be to treat each affected employee as an individual to the extent possible, to resolve particular problems, to refer the employee to the appropriate office, and to give special assistance in the completion of necessary forms, updating of resumes, or other matters;
4. Provide general information concerning the conversion of insurance policies through the RIF Information Center. Any employee involved in a RIF shall be allowed a reasonable amount of time to visit the HR Division or the RIF Information Center, whichever is appropriate, for the purpose of consultation on the subject of his/her rights regarding conversion of insurance policies in accordance with the provisions of 5 CFR § 351;
5. Maintain information assembled by the Outplacement Committee (referenced in Section 48.10.1 of this Article) on job opportunities outside this Agency. Sources of placement information (e.g., other agencies, trade associations, job banks, etc.) will be placed in the RIF Information Center, and employees will be allowed a reasonable amount of time to make use of the information; and
6. Upon request, the Agency agrees to schedule meetings of affected employees (generally on a division-wide basis) to explain the contents of this Article and to answer questions concerning it. The Union will be given at least twenty-four (24) hours notice of such meetings, and the Agency will make a reasonable attempt to stagger the scheduling of the meetings. For purposes of this Section, affected employees means those who receive specific RIF notices or reassignment letters.

#### **Section 48.5 Notice**

##### **Section 48.5.1**

The Agency will provide affected employees a specific written notice at least sixty (60) full days before the effective date of release. The Agency also intends to notify those employees who will be reassigned without a release from their competitive levels no later than the issuance of specific notices.



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**Section 48.5.2**

The Agency will provide a notice as required by 5 CFR § 351.802.

**Section 48.5.3**

The Agency will advise all employees affected by a RIF to update their resumes according to established RIF timelines. This advice will be provided no later when the specific notice is issued and will explain the possible consequences of not having an updated resume in the employee's Official Personnel Folder (OPF).

**Section 48.5.4**

Specific RIF notices will provide employees with ten (10) workdays to accept or decline an offer of continuing employment. The Agency will consider requests for additional time, as needed, on a case-by-case basis.

**Section 48.6 Retraining and Performance Standards****Section 48.6.1**

Employees assigned to other positions due to any RIF will be counseled individually by their new supervisor(s). Supervisors will discuss training needs with the employee(s) on a continuing basis and they will provide, to the maximum extent practicable, on-the-job training necessary for the employee to perform the new job in a satisfactory manner within one hundred twenty (120) days of being assigned to the new position.

**Section 48.6.2**

Employees who have duties different from those previously performed will receive first consideration in any Agency-sponsored training course when such training can be reasonably related to the employee's new position. The Agency reserves the right to determine the employees selected for training.

**Section 48.6.3**

New work performance appraisal plans of not less than one hundred (120) days duration will be constructed for all employees affected by reassignment or displacement. Special attention will be focused on training that addresses the critical aspects of the new job and on scheduling such training expeditiously.

**Section 48.6.4**

The Agency will make available to employees receiving specific notice of separation, reasonable in-house training resources in fields where outside employment prospects appear encouraging and where it is practical for the Agency to provide such training.

**Section 48.7 Competitive Area****Section 48.7.1**

The Agency will set the competitive area in accordance with 5 CFR § 351.402. A competitive area is an area where employees compete for retention. A competitive area must be defined solely in terms of the Agency's organizational unit(s) and geographical location, except as provided in 5 CFR § 351.402(e), and it must include all employees within the competitive area as defined.

**Section 48.7.2**

The Agency will not assign employees into or from the competitive area for the purpose of coercing any employee's resignation or retirement.

**Section 48.7.3**

To the maximum extent that can be avoided or delayed, no transfers or details will be made into or out of a competitive area (if the transfer or detail affects in any way a competitive level involved in the RIF or other applicable action) until after an announced RIF or other applicable action is completed.



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## **Section 48.8 Competitive Levels**

### ***Section 48.8.1 Criteria Used for Establishing Competitive Levels***

A competitive level consists of all the positions in a competitive area that are in the same grade (or occupational level) and classification series, and are similar enough in duties, qualification requirements, pay schedules, and working conditions so that an Agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption.

### ***Section 48.8.2 Undue Interruption***

Undue interruption is a degree of interruption that would prevent the completion of required work by the employee ninety (90) days after the employee has been placed in a different position. The ninety (90) day standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands.

However, a work program would generally not be unduly interrupted, even if an employee needed more than ninety (90) days after the RIF to perform the optimum quality or quantity of work. The ninety (90) day standard may be extended if placement is made under this part to a low-priority program or to a vacant position.

### ***Section 48.8.3 Qualification Considerations***

Competitive level determinations are based on each employee's official position, not the employee's personal qualifications.

### ***Section 48.8.4***

As soon as practicable following a request, the Union will be furnished a copy of the documentation that defines affected competitive levels; an employee may also request and receive information pertinent to his/her case.

### ***Section 48.8.5***

No later than ten (10) workdays from the time an employee receives a specific RIF notice, the employee may review a listing of the competitive level in which he/ she has been placed, consistent with the Privacy Act, and as an explanation of the competitive level structure.

## **Section 48.9 Retention Registers**

Upon twenty-four (24) hours notice, employees who have been affected by a RIF and their respective representatives will be given the opportunity to review competitive level (retention) registers, regulations, or other records pertaining to their respective cases. Requests to review such information should be directed to the designated Agency representative. Employees will be considered to have been affected when they receive their specific RIF notice.

### ***Section 48.9.1***

The employee may review retention registers listing the following:

1. Employees in his/her competitive level;
2. Employees in competitive levels who may be reasonably entitled to displace him/her;
3. Employees in competitive levels to which he/ she reasonably may have assignment (bump/retreat) rights; and
4. Other competitive levels, if any, reasonably related to the employee's situation. Retention registers may be redacted in accordance with applicable privacy laws.

### ***Section 48.9.2***

Following receipt of a specific notice, an affected employee may request and be provided the full bump/retreat chain pertaining to his/her situation according to 5 CFR § 351 Subpart (G).

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## **Section 48.10 Assignment**

### ***Section 48.10.1***

The parties agree to establish an Outplacement Committee whose functions shall be to monitor the subsequent assignment of employees affected by one of the actions covered by this Article and recommend settlements of problems where appropriate.

### ***Section 48.10.2***

The committee's function concerning a given employee(s) shall cease six (6) months from the effective date of the action affecting him/her.

### ***Section 48.10.3***

The agency will designate a management official with sufficient authority to secure necessary information to chair the committee. Each Party shall designate two (2) additional members.

The committee members, or other designees, shall meet weekly for ninety (90) days and biweekly after that for a ninety (90) day period unless a majority of members agree to an alternate arrangement.

### ***Section 48.10.4***

The committee will be kept advised of vacancies that the Agency seeks to fill. The committee will be advised of the Agency's action concerning all assignment actions (i.e., position changes, details, etc.) as soon as practicable. The committee will also be advised of any employee requests under Section 48.10.7 of this Article and the action taken by the Agency. The committee is intended as a good faith attempt by both Parties to study and recommend, in an expeditious manner, reasonable and acceptable solutions to problems that have arisen.

### ***Section 48.10.5***

The committee may note any problems it perceives and make its recommendation(s) for addressing such problems. Such recommendation(s) shall not be construed to prejudice the respective position of either Party, or the employee(s) involved, or any grievance (s) or appeal(s) that may ensue.

### ***Section 48.10.6***

The parties recognize that an employee may be dissatisfied with his/her offer of assignment. Where the employee accepts the offer but remains dissatisfied following a reasonable trial period of at least thirty (30) days, the employee may forward a written request for reassignment to the Chief, HR Division, who will forward it to the Assignment Review Committee in accordance with Section 48.10.5 of this Article. The employee may request to discuss the matter orally with the committee, indicating the reasons for such request. The Agency will (for six [6] months) give serious consideration to any such request before considering another eligible reassignment, except as may otherwise be authorized by regulation.

### ***Section 48.10.7***

To minimize displacement actions that would result from a RIF, the Agency will, to the maximum extent feasible, assign an affected employee to any position for which the employee meets the criteria, as set forth in 5 CFR § 351.701 and 351.702.

### ***Section 48.10.8 Waiving Qualifications***

At its discretion, the Agency will waive position-specific requirements, as set forth in 5 CFR § 351.703.

### ***Section 48.10.9***

During a RIF, the Agency will (to the maximum extent feasible given mission requirements) freeze promotions and transfers in the affected competitive levels within the same competitive area until the RIF has been completed.

## **Section 48.11 Outside Hiring**

To the extent practicable, the Agency will first consider employees facing separation in a RIF before posting vacancies open to the public.

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## **Section 48.12 Transfer of Function**

### ***Section 48.12.1 Definition***

In accordance with 5 CFR § 351.301, a transfer of function (TOF) means the work of one (1) or more employees is moved from one (1) competitive area to another, regardless of whether or not the movement is made under authority of a statute, executive order, reorganization plan, or other authority. In a TOF, the function must cease in the losing competitive area and continue in an identical form in the gaining competitive area (i.e., in the gaining competitive area, the function continues to be carried out by competing employees rather than by noncompeting employees).

For the purposes of this Article, a TOF applies to transfers of the performance of continuing functions outside of the Agency or the local commuting area.

### ***Section 48.12.2***

When the Agency determines that a TOF is necessary, the Agency will inform the Union as far in advance as practicable, giving the reason for the action, the approximate numbers, types, and geographic location of the positions to be affected, and the approximate date of the action.

### ***Section 48.12.3***

The Agency will identify positions that will transfer with the function in accordance with OPM regulations in effect as of the effective date of this Agreement.

### ***Section 48.12.4***

Employees whose positions have been designated as transferring with the function will be notified in writing. The notice will state that the employee is being offered the opportunity to volunteer for transfer with his or her position.

The notice will further state the following:

1. The name and location of the new work site;
2. The complete address of the new work site;
3. The applicable salary, including locality pay, of the employee's position at the new work site;
4. That the employee is free to decide whether to accept the offer of the opportunity to volunteer for transfer with his or her position;
5. That should the employee be selected to transfer with his or her position within the Agency, the Agency will pay moving expenses and pay for house-hunting trips in accordance with statute and government-wide regulation;
6. That it is possible that not all volunteers will be able to transfer with their position;
7. That should the employee choose not to transfer with his or her position, or if the employee is not selected to transfer despite having volunteered, the employee may be separated from his or her current position by adverse action procedures; and
8. The deadline for responding to the offer of transfer, provided that this date will be no less than thirty (30) days from the date of the notice.

### ***Section 48.12.5***

If there are not enough qualified volunteers from those affected employees, the Agency will solicit qualified volunteers from the rest of the affected competitive area(s).

### ***Section 48.12.6***

If the total number of qualified employees who volunteer for transfer exceeds the total number of employees required to perform the function in the gaining competitive area, preference will be given to the volunteers with the highest retention standing. If there are not enough qualified volunteers for the transfer, qualified employees with the lowest retention standing will be selected for involuntary transfer.

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## **Section 48.13 Grade/Pay Retention and Severance Pay**

### ***Section 48.13.1 Grade and Pay Retention***

The Parties agree that grade and pay retention will be provided for in accordance with 5 CFR, Part 536, Subpart B.

### ***Section 48.13.2 Severance Pay***

Eligible employees who are separated as a result of the RIF will be paid severance pay in accordance with applicable rules and regulations.

## **Section 48.14 Employment Assistance**

### ***Section 48.14.1***

An Outplacement Committee will be activated as soon as practicable, consisting of a qualified management employee to act as head of this committee with two (2) additional members appointed by management and two (2) employees appointed as members by the Union. The purpose of this committee will be to review and monitor all activities under Section 48.14.1 Employment Assistance of this Article. For a period of six (6) months after the effective date of a RIF, the committee shall meet weekly unless a majority of committee members agree to alternate scheduling.

### ***Section 48.14.2***

The Agency will provide selection priority for internal vacancies through the Career Transition Assistance Program (CTAP) to current eligible employees. Priority consideration will be provided in other federal agencies for displaced employees through the Interagency Career Transition Assistance Plan (ICTAP). Employees seeking priority consideration under the CTAP and ICTAP must apply for a specific vacancy and must be considered well qualified for the vacancy.

Eligible applicants who are deemed well qualified will receive priority consideration for selection. In addition, the Agency will place eligible employees on the Reemployment Priority List and in the Agency's Priority Placement Program. Information and assistance on each of these programs will be made available to employees through the RIF Information Center.

### ***Section 48.14.3***

The acceptance of temporary employment will not affect an employee's continuing right to be considered for permanent or nontemporary employment under the above programs.

### ***Section 48.14.4***

At their request, all employees receiving a specific notice of separation will be scheduled for seminars on job searching, personal marketing, interviewing skills, resume preparation, and stress management. The purpose of these sessions shall be to help affected employees assess themselves in terms of the contemporary labor market, build job-seeking skills, and reduce stress.

The Union may designate an official to attend such seminars. Employees will be assisted in obtaining copies of performance evaluations. They will be granted a reasonable amount of official duty time to visit interagency job centers or attend job interviews. To the extent permitted under law and regulation, the Agency will continue to extend the services to employees after the employee's separation.

### ***Section 48.14.5***

The Agency will canvas affected employees for interest and offer additional seminars as needed. A record will be maintained for the Outplacement Committee of the announced days and times of the meeting and the employees who attend.

### ***Section 48.14.6 Unemployment Compensation***

The Agency will request to have representatives of the Unemployment Insurance Agencies from all states where employees would file claims, come to the Agency and make presentations regarding benefits, eligibility requirements, and application procedures. A reasonable amount of duty time will be provided to attend these presentations.

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## **Section 48.15 Details**

The retention standing of all employees on detail will be based on their permanent positions, not on the positions to which they were detailed.

## **Section 48.16 Records**

### ***Section 48.16.1***

The Agency will maintain all registers and records relating to the retention standing of affected employees intact for at least two (2) years, or until such time as all grievances or other litigation concerning the RIF or other applicable action have been concluded. Current employees and former should be granted full, complete, and unabridged access to such records relating to their individual cases. Release of information to Union officials and/or current/former employees will be granted in accordance with the Freedom of Information Act, Privacy Act, and in accordance with Article 6, Union Rights, Section 6.8, Right for Information.

### ***Section 48.16.2***

The Union and the Agency will protect the confidentiality of any Privacy Act information available under this Article and take sufficient precautions to secure such information from unauthorized disclosure.

## **Section 48.17 Repromotion**

Employees who are downgraded through a RIF are entitled to priority placement consideration for repromotion.

## **Section 48.18 Rating of Record**

### ***Section 48.18.1***

In a RIF, an employee will receive service credit based on an average of the employee's three (3) most recent ratings of record received during the four (4) year period prior to the date of the issuance of a specific RIF notice (or an officially designated performance credit cut-off date).

Service credit shall be computed as follows:

Level 5: 20 years

Level 4: 16 years

Level 3: 12 years

Level 2: 0 years

Level 1: 0 years

### ***Section 48.18.2***

An employee who does not have a rating of record will be assigned a modal rating. A modal rating is the summary rating level assigned most frequently within the employee's actual ratings of record given that are:

1. Assigned under the same summary pattern that applies to the employee's position of record on the date of the RIF;
2. Given within the same competitive area or, at the Agency's option, within a larger subdivision of the Agency or Agency-wide; and
3. On record (issued to the employee with all appropriate reviews and signatures) for the most recently completed appraisal cycle prior to the date of issuance of RIF notices, or prior to the cut-off date the Agency specifies before the issuance of RIF notices after which no new ratings will be entered into the record.

The Agency agrees to give twenty (20) years of credit to outstanding or equivalent rating levels under the Census Bureau's five (5) level system.

Examples of service credit for a transferred rating of record from another Agency on a multilevel system, under a summary pattern as provided in 5 CFR Part 430, will be given credit as follows:

**5 Level System** - Level 5 (outstanding or equivalent): 20 years credit, Level 4 (commendable or equivalent): 16 years credit, Level 3 (fully successful or equivalent): 12 years credit, Level 2 (marginal or equivalent): 0 years credit, and Level 1 (unacceptable or equivalent): 0 years credit;

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**4 Level System** - Level 4 (outstanding or equivalent) - 20 years credit, Level 3 (fully successful or equivalent) - 12 years credit, Level 2 (marginal or equivalent) - 0 years credit, and Level 1 (unacceptable or equivalent) - 0 years credit;

**3 Level System** - Level 3 (outstanding or equivalent) - 20 years credit, Level 2 (fully successful or equivalent) - 12 years credit, and Level 1 (unacceptable or equivalent) - 0 years credit;

**2 Level System (Pass/Fail)** - Level 2 (meets or exceeds or equivalent) - 12 years credit; and

**Level 1** (does not meet expectations) - 0 years credit.

For more information not covered above, refer to 5 CFR § 430.208(d).

#### **Section 48.19 Services to Employees Affected by Reduction in Force, Directed Reassignment, or Transfer of Function**

1. Employees relocated outside of the local commuting area due to any action under RIF may be entitled to relocation expenses in accordance with applicable laws, rules, and regulations.
2. When the Agency assigns an employee to a position that requires a move to another geographic area, the Agency will inform the Union as far in advance as practicable, giving the reason for the action, the approximate numbers, types, and geographic location of the positions to be affected, and the approximate date of the action.
3. Employees issued a directed reassignment to a different commuting area who elect to relocate will be allowed up to sixty (60) days as necessary to complete the move and report to work at the new location. Additional time may be granted at the discretion of the gaining supervisor. The employee will continue to report to duty at their current location during the transition.
4. After receiving the Agency's offer of a directed reassignment, an employee may request an assignment, to an available vacant position where he/she is qualified at the same or lower grade. The Agency agrees to consider such a request. An available position is a funded position that has not been identified in a job offer to another affected employee.

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## ARTICLE 49. CONTRACTING OUT/PRIVATIZATION

### Section 49.1 Definitions

**Business Process Re-engineering (BPR)** is a systematic, disciplined improvement approach that critically examines, rethinks, and redesigns mission delivery and work processes in order to achieve dramatic improvements in performance efficiency and effectiveness in areas important to end users, customers, and stakeholders.

**Contracting Out** means a change in the performance of a commercial activity from the Agency to a private- sector provider outside of the Agency. This is referred to as a “conversion to contract” in the Office of Management and Budget (OMB) Circular A-76.

**Insourcing** means a change in the performance of a commercial activity from a private-sector provider (outside the Agency) to Agency performance by Agency employees. This is referred to as a “conversion from contract” in OMB Circular A-76.

**OMB Circular A-76** refers to the OMB government-wide procedures for conducting public private cost comparisons required before work performed by federal employees can be converted to contractor performance. All references to OMB Circular A-76 in this Article shall also apply to any successor public-private competition process.

**Reorganization** means the planned elimination, addition, or redistribution of functions or duties in an organization.

**Start of preliminary planning for the purposes of this Agreement** means, with respect to the OMB Circular A- 76, the process begins on the date on which the Agency assigns Agency personnel, or obligates funds for the acquisition of contract support, to carry out any of the following activities:

1. Determining the scope of the competition;
2. Conducting research to determine the appropriate grouping of functions for the competition;
3. Assessing the availability of workload data, quantifiable outputs of functions, or Agency or industry performance standards applicable to the competition; or
4. Determining the baseline cost of any function for which the competition is conducted.

Work, as exclusively defined for the provisions of this Article, means work currently or last performed by Agency employees, an expansion or surge of work currently or last performed by Agency employees, and new work not previously required by the Agency.

### Section 49.2 General

The provisions of this Article concern any contracting out of work being or potentially performed by employees that impacts conditions of employment and creates a statutory duty to bargain. This Article applies to contracting out actions, reorganizations, and/or reviews regardless of the authority under which the action or review was initiated. This includes, but is not limited to, contracting out reviews conducted under OMB Circular A-76 procedures, service contracts, and/or work that are directly converted to contractor performance without a public- private competition.

#### Section 49.2.1

The Agency shall comply with all applicable laws, government-wide rules and regulations in all aspects of the contracting, BPR, realignment, redistribution, reviews, studies, or other similar initiatives of work processes.

### Section 49.3 Notice and Briefings to the Union on Contracting Actions

#### Section 49.3.1

With regard to contracting actions taken under OMB Circular A-76, the Agency will notify the Union and conduct periodic briefings with Union officials at the local and/or national level, as applicable; beginning with the start of preliminary planning, to provide information concerning contracting out, insourcing, Federal Activities Inventory Reform (FAIR) Act, and any Agency decisions that may impact employees.

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**Section 49.3.2**

Prior to contracting out work outside the OMB Circular A-76, a process which will impact conditions of employment and create a statutory duty to bargain, the Agency will provide notice to the Union before the invitation of bids, including information concerning positions, locations, and the employees who may be affected. The Agency will meet with the Union to discuss the information contained in the notice. Following discussions, the Union may request to negotiate the process to the extent required by 5 U.S.C. §71 and in accordance with Article 16, Mid-Term Bargaining.

**Section 49.4 Site Visits**

The Agency will notify the Union pursuant to Section 49.3.1 of this Article, if a site visit is going to be conducted for potential bidders seeking contracts. A local Union representative may attend such a site visit.

**Section 49.5 Employee Placement**

When employees are adversely affected by a decision to contract out, the Agency will make maximum effort to find available positions for employees. This effort will include the following:

1. Giving priority consideration for available positions within the Agency;
2. In accordance with applicable law and government-wide rules and regulations, establishing an employment priority list and a placement program; and
3. Paying reasonable costs for training, subject to available budget. The Agency retains the discretion to determine what training is appropriate.

**Section 49.6 Employee Privileges and Benefits**

Employees' privileges and benefits will not be diminished by allowing contractors to participate in employee programs. Such privileges include, but are not limited to, health screening, health fitness programs, and government-sponsored training.

**Section 49.7 Inventory of Commercial Activities**

Upon request, the Agency will provide the Union with a copy of its FAIR Act inventory in accordance with Article 6, Union Rights, Section 6.8, Right to Information.



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## **ARTICLE 50. OFFICIAL TRAVEL**

### **Section 50.1 General**

#### ***Section 50.1.1***

The nature of the mission of the Agency is such that it might be necessary for employees to travel officially on behalf of the government.

#### ***Section 50.1.2***

The Parties agree that proposed modifications to conditions of employment based on changes in the Federal Travel Regulations (FTR) will be processed in accordance with Article 16, Mid Term Bargaining.

#### ***Section 50.1.3***

When employees travel on official business requiring written orders/authorization, i.e., travel for more than twelve (12) hours, orders/authorization will be prepared, and allowances will be authorized consistent with applicable law, rule, regulation, and the terms of this Agreement.

#### ***Section 50.1.4***

Travel Orders/Authorization shall be issued in advance of the date that the travel is to begin, except in cases of urgent or unusual situations. In the absence of such circumstances, orders/authorization will be issued sufficiently in advance to permit the employee to complete all travel arrangements prior to the travel, including lodging arrangements, obtaining transportation requests or tickets, and advance funds if desired.

#### ***Section 50.1.5***

When employees travel locally, and written orders/authorization are not required, such travel will be paid consistent with applicable law, rule, regulation, and the terms of this Agreement.

Time spent in a travel status will be compensated in accordance with all applicable laws, rules, regulations, and this Agreement.

### **Section 50.2 Government Travel Charge Card (GTCC)**

#### ***Section 50.2.1***

Employees required to travel will obtain and use the GTCC for official travel expenses. The Agency may exempt the following employees from the mandatory use of the GTCC:

1. New employees who have an application pending;
2. Temporary or intermittent employees; or
3. Employees who may potentially travel less than 5 times per year.

#### ***Section 50.2.2***

Employees shall not be required to do the following in order to perform their jobs:

1. Apply for personal credit;
2. Apply for a GTCC unless the employee is required to travel;
3. Waive his/her constitutional rights and other rights, which include but are not limited to the Privacy Act, laws, and federal statutes; or
4. Have unreasonable cost burdens imposed on him/her.

#### ***Section 50.2.3***

The Agency shall take reasonable steps to ensure that employees are protected from any adverse impact caused by their use of the GTCC for official travel purposes unless the employee becomes delinquent on his/her account or otherwise misuses the GTCC, consistent with applicable law, regulation, rules, and the terms of this Agreement.

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If an employee is exempt, does not meet the criteria for obtaining a GTCC, or does not have the resources, the Agency may authorize one or a combination of the following methods of payment in accordance with applicable law, rule, and regulations:

1. Personal funds, including cash;
2. Government Transportation Request;
3. Personal charge card; or
4. Travel advances.

### **Section 50.3 Scheduling Travel**

#### ***Section 50.3.1***

Whenever possible, the Agency will schedule and arrange for travel during an employee's regularly scheduled work hours.

#### ***Section 50.3.2***

If circumstances require an employee's presence on Monday too early to permit travel that day, the employee may perform the travel on the preceding day (Sunday), leaving home or official station at a reasonable time. If the employee prefers, travel may be permitted during duty hours on the preceding Friday. In this event, subsistence reimbursement may be allowed to start with the departure time but will be limited to the amount that would have been payable if the departure was made on Sunday.

#### ***Section 50.3.3***

Employees will not be required to travel away from their official stations, without appropriate Temporary Duty (TDY) orders or other written authorization, when it is reasonably foreseeable in advance that they will be away from their official station for more than twelve (12) hours.

When travel results from an event that cannot be scheduled or controlled administratively, such travel may be considered hours of employment for payment purposes or as compensatory time for travel according to applicable law, rule, regulations, and the terms of this Agreement.

#### ***Section 50.3.5***

If the travel is expected to require employees to be absent from their official station for three (3) or more consecutive months, the Agency will provide employees with at least thirty (30) days notification of their date of departure when practicable. The Parties recognize that emergency circumstances may limit the amount of notice time that can be provided.

#### ***Section 50.3.6***

Employees who are on travel away from their official station and elect to return home during nonworkdays will be reimbursed for travel not to exceed the amount reimbursable for the per diem had they remained at the TDY location.

#### ***Section 50.3.7***

Normally, employees will not be required to stay away from their official stations two (2) consecutive weekends unless the assignment involves working on the weekend or other exigent circumstances apply.

#### ***Section 50.3.8***

Employees traveling on official business for any purpose will not be required to share a room.

### **Section 50.4 Per Diem Allowances**

#### ***Section 50.4.1***

The per diem allowance (also referred to as subsistence allowance) is a daily payment instead of reimbursement for actual expenses for lodging, meals, and related incidental expenses. The per diem allowance is separate from certain transportation expenses and miscellaneous expenses.

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The per diem allowance covers all charges, including service charges, where applicable, for lodging, meals, and incidental expenses as allowed by applicable law, rules, regulations, and the terms of this Agreement. Lodging taxes are considered a separate reimbursable expense and not part of the per diem.

#### ***Section 50.4.2***

Per diem rates are established according to applicable laws, rules, and regulations. In instances where an employee is in a travel status, and the employee's actual and necessary subsistence expenses are in excess of the established per diem allowances for one (1) or more days, the employee may file a request and will be authorized actual expenses under the provisions of the applicable laws, rules, and regulations.

### **Section 50.5 Advances**

#### ***Section 50.5.1***

Employees approved for travel advances, in accordance with Section 50.2.4 of this Article, will be advanced travel funds in amounts consistent with applicable law, rule, regulation, and this Agreement. An employee traveling on official business may request an appropriate advance to cover per diem, or actual subsistence expenses, mileage for the use of a privately owned vehicle, and other applicable costs incidental to official travel not directly billed to the Agency or charged to a government travel charge card.

#### ***Section 50.5.2***

Travel advances will be made available prior to the date of departure to those employees who make a timely request.

#### ***Section 50.5.3***

Employees with outstanding advance that exceeds what is owed to the traveler, the Agency will collect repayment in accordance with the FTR. Claims must be filed within five (5) business days after travel is complete; exceptions beyond five (5) business days to submit claims are rare and may be considered. The employee is required to pay the money back to the Agency.

#### ***Section 50.5.4***

In the event of an outstanding advance that exceeds what is owed to the traveler, the Agency will obtain repayment by the means as set forth in 41 CFR § 301-71.308.

Employees will be given ample written warning prior to the Agency levying any interest, penalty, or other financial charges because of delinquent repayment of unused travel advances. Such a warning will be sufficiently in advance to give employees a fair opportunity to avoid the assessment of penalties, interest, or other charges. Employees will also be told of the amount of interest that would be charged, the method of accrual, the interest rate, the way(s) in which any delinquencies could be involuntarily collected, and how they might challenge assessment decisions made by the Agency.

### **Section 50.6 Promotional Items**

#### ***Section 50.6.1***

Employees may keep promotional benefits and materials received from a travel service provider for personal use if the items are obtained under the same conditions as those offered to the general public, are at no additional cost to the federal government, and are kept in accordance with applicable law, rule, regulation, and the provisions of this Agreement. Examples include frequent traveler benefits, upgrades, or access to carrier clubs and facilities.

### **Section 50.7 Reimbursements**

#### ***Section 50.7.1***

All employees traveling will have access to and submit reimbursements claims on the forms prescribed by the Agency. Employees will be provided training and may request additional assistance.

#### ***Section 50.7.2***

Reimbursement claims must be submitted by employees within five (5) business days after the completion of the travel. Consistent with law, rule, and regulation, employees will be reimbursed for all undisputed portions of their reimbursement claims within thirty (30) days after their submissions of a properly executed claim (voucher) to the Agency.

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### **Section 50.7.3**

An employee shall receive a written notification from the Agency of all disallowed expenses at the time he or she is notified of payment of undisputed expenses, or not more than seven (7) days later. This notice shall state:

1. The reason(s) in detail as to why expenses were disallowed.
2. The employee has the right to request reconsideration of expenses if they have additional information.
3. The name of the Agency official to whom reconsideration may be requested; and
4. An explanation of the process of appealing disallowances.

### **Section 50.7.4**

The Agency shall pay employees' late fees for all reimbursements that are not paid within thirty (30) days of employees' submissions of proper claims to designated Agency officials. Late payments shall be calculated in accordance with applicable law, rule, or regulation.

The late fee shall be calculated based on the prevailing Prompt Payment Act interest rate beginning on the thirty-first (31st) day after submitting a proper travel claim and ending on the date on which payment is made. Alternatively, the Agency may reimburse the employee a flat fee of not less than the prompt payment amount based on an Agency-wide average of travel claim payments. In addition to the fee required, the Agency will also pay an amount equivalent to any late payment charge that the card contractor would have charged had the bill not been paid.

## **Section 50.8 Accommodating Special Needs**

Consistent with its obligations under applicable laws, rules, regulations, and the provisions of this Agreement, the Agency shall provide reasonable accommodations to employees with special needs by paying for additional travel expenses. Depending on the circumstances, these additional expenses may include, but not be limited to, the following:

1. Transportation and per diem expenses incurred by a family member or other attendant who must travel with the employee to make the trip possible;
2. Specialized transportation to, from, and/or at TDY duty locations;
3. Specialized services provided by a common carrier to accommodate employees' special needs;
4. Costs for handling baggage that is a direct result of employees' special needs;
5. Renting and/or transporting a wheelchair;
6. Other than coach-class accommodations to accommodate employees' special needs under 41 CFR 301-10.103; and
7. Services of an attendant, when necessary, to accommodate employees' special needs.

## **Section 50.9 Privately Owned Vehicles (POVs)**

### **Section 50.9.1 For the Purposes of Official Travel**

Ownership or use of a POV is not a condition of employment. Therefore, use of a POV by an employee for official government business is voluntary.

If an employee is unable or unwilling to use his or her POV for official government travel, it is the Agency's responsibility to provide transportation.

### **Section 50.9.2**

When an employee volunteers to use his/her POV, and that use is authorized by the Agency, the mileage allowance and related expenses allowed by applicable law, rule, or regulation will be authorized.

### **Section 50.9.3**

Mileage calculations when an employee uses their POV for official government travel will be reimbursed in accordance with the FTR.

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**Section 50.9.4 Local Travel**

The local area is defined as a mileage radius of fifty (50) miles within the employee's official station. This local area definition applies only to this Article relating to mileage reimbursement. It is not to be confused with established competitive areas for RIF or commuting areas for recruitment and staffing purposes.

**Section 50.9.5 Reimbursement for Local Travel**

When commuting to or from an alternative duty point(s) within the local area, employees may request and will be reimbursed for the total miles traveled less than their normal commuting mileage.

**Section 50.9.6**

An employee authorized to use his/her POV will not be required to carry a passenger(s). If an employee voluntarily accepts an employee(s) as a passenger(s) on official business, any claim against the owner of the POV by the passenger(s) for damages will be processed under applicable laws, rules, or regulations.

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## **ARTICLE 51. SMOKING AND E-CIGARETTES**

### **Section 51.1**

To protect federal employees and the public from exposure to tobacco smoke and e-cigarette aerosol in the federal workplace, the Parties agree that smoking, the use of e-cigarettes, smokeless tobacco or any other vaping device(s) are prohibited in Agency occupied and leased buildings, government-owned or government-leased vehicles, and during emergency evacuations, including all fire drills.

Employees may only smoke and use e-cigarettes/vapes in appropriate designated smoking areas.

### **Section 51.2 Breaks**

Smoking may only occur during breaks as outlined in Article 42, Work Schedules, during a meal period or before or after work hours. No additional breaks are allotted for smokers that are not allotted for any other employee.

### **Section 51.3 Smoking Areas**

Designated smoking areas, including those with smoking shelters and/or windbreaks, will continue to be provided at approved locations across facilities. Any changes to current smoking policies and/or designated areas will be handled in accordance with Article 16, Mid-Term Bargaining.

### **Section 51.4 Proper Disposal**

Disposal of smoking products including smokeless tobacco products should be disposed of in appropriate receptacles. These products should not be disposed of on the lawn, sidewalks, or parking areas located on any part of the facility.

### **Section 51.5 Compliance and Enforcement**

The success of this Article depends on the support and compliance of all employees. Concerns about violations of this Agreement should be directed either to Agency management representatives or to the Union. Violation of the provisions of this Agreement may be cause for appropriate administrative action.

### **Section 51.6 Smoking Cessation Program**

The Agency will provide assistance and information to employees who wish to cease using tobacco or nicotine products. The Agency, where possible, may offer other types of assistance such as tobacco or nicotine cessation seminars, support systems, cessation groups, and publicity about quitting techniques.

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## ARTICLE 52. NEPOTISM

This Article shall be administered in accordance with Title 5, U.S.C., Chapter 2302, Title 5, U.S.C., Chapter 3110 and Title 5, CFR, 310.

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action in the Agency, shall not, with respect to such authority, appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement in or to a civilian position any individual who is a relative.

Relative means an individual who is related to the employee such as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

The Office of Personnel Management is authorized to prescribe regulations pertaining to the temporary employment of relatives, in certain conditions. When necessary to meet urgent needs resulting from an emergency posing an immediate threat to life or property, or a national emergency as defined in 5 CFR 230.402(a)(1), a public official may employ relatives to meet those needs without regard to the restrictions on the employment of relatives in 5 U.S.C. 3110. Such appointments are temporary and may not exceed 30 days, but the agency may extend such an appointment for one additional 30-day period if the emergency need still exists at the time of the extension.

The Agency will conduct an inquiry, as appropriate, of any nepotism-related allegations made regarding improper supervisor-subordinate relationships and take corrective action.

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## **ARTICLE 53. RETIREMENT, RESIGNATION, AND SEPARATION**

### **Section 53.1 General**

This Article shall be administered in accordance with applicable laws, rules, regulations, and this Agreement.

An employee's decision to resign or retire, if eligible, shall be made freely.

### **Section 53.2 Information**

The Agency will provide employees with information regarding the federal retirement program. This shall include information, materials, and resources such as the Office of Personnel Management (OPM) website, retirement counseling, etc. Funds permitting, preretirement training seminars will be made available. Those employees who are within five (5) years of optional retirement eligibility will be notified and given priority for training.

### **Section 53.3 Voluntary Separation**

Employees who separate due to a medical condition may apply for disability retirement.

Separating employees, depending on length of service and other criteria, also may be eligible for a discontinued service retirement or deferred annuity.

For information regarding retirements, resignations, separations and other entitlements, employees should contact their Servicing Human Resources (HR) Office.

### **Section 53.4 Involuntary Separation (Employees Facing Termination or Removal)**

If an employee is facing termination or removal, the employee may resign freely and in accordance with prevailing regulations any time prior to the effective date.

An employee may withdraw his or her resignation at any time prior to its effective date.

The employee will be notified in a termination or removal decision letter that they may contact their Servicing HR Office to determine their eligibility for filing a disability retirement within one (1) year of their separation.

### **Section 53.5 Withdrawal of a Retirement Application**

An employee may withdraw a retirement application at any time prior to its effective date in accordance with 5 CFR § 841.203. The Agency may decline such a request before its effective date only when the Agency has a valid reason and explains that reason to the employee. Valid reasons include, but are not limited to administrative disruption, or the hiring or commitment to hire a replacement. For further information, please contact your Servicing HR Office.

### **Section 53.6 Thrift Savings Plan**

The Agency will provide eligible employees information relating to the TSP during new employee orientation sessions. Additional information concerning investing in TSP is available on the TSP website at <[www.tsp.gov](http://www.tsp.gov)>.



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## ARTICLE 54. REASONABLE ACCOMMODATIONS

### Section 54.1 Reasonable Accommodation for Employees With Disabilities

#### Section 54.1.1

In accordance with The Rehabilitation Act of 1973, as amended; Executive Order (E.O.) 13164, Establishing Procedures to Facilitate the Provision of Reasonable Accommodation (RA), dated July 26, 2000; 29 United States Code (U.S.C.) Section 791 et seq.; 29 Code of Federal Regulations (CFR) Part 1614.203; Title I (Employment) of the Americans with Disabilities Act (ADA) of 1990, as amended, 42 U.S.C. §§ 12101 et seq.; 29 CFR part 1630; and the Americans with Disabilities Act Amendments Act (ADAAA) of 2008, PL 110-325 (S. 3406); EEOC Revised Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the ADA, dated October 2002; EEOC Policy Guidance on E.O. 13164, dated October 2000 and regulations pertaining to the employment of qualified individuals with disabilities, the Agency is committed to provide equal opportunity for the employment, placement, and advancement of qualified individuals with disabilities including temporary disabilities and disabled veterans. No qualified employee may be denied the benefits of a program, training, or activity conducted, sponsored, funded, or promoted by the Agency, or otherwise be subjected to discrimination on the basis of disability.

Although, pregnancy is not a disability, a request for reasonable accommodation under Pregnant Workers Fairness Act (PWFA) will be processed in the same manner as a request for reasonable accommodation for persons with disabilities. According to the PWFA, "reasonable accommodations" will be provided for an employee's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the Agency an "undue hardship."

#### Section 54.1.2

Department Administrative Order (DAO) 215-10, Reasonable Accommodation for Employees or Applicants with Disabilities, governs the reasonable accommodation (RA) process. RA is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. The reasonable accommodation must be effective in meeting the needs of the employee.

The Agency agrees to provide reasonable accommodation in a prompt, fair and efficient manner to individuals with disabilities who are qualified employees that request an accommodation to enable him or her to perform the essential functions of the job or to gain access to the workplace, or to enjoy equal benefits and privileges of employment as are enjoyed by similarly situated employees without disabilities.

Reasonable accommodation categories:

- a. Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires. For example, appropriate adjustments or modifications of examinations, training materials, or policies that will allow applicants to fully participate in the application process.; or
- b. Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position. For example, job restructuring, part-time or modified work schedules, telework, acquisition or modification of equipment or devices, reassignment to a vacant, funded position, as a last resort.; or
- c. Modifications or adjustments that enable the Agency's employees with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities. For example, making existing facilities used by employees readily accessible to and usable by individuals with disabilities. Also, providing assistant services to help with job functions, such as qualified readers or interpreters.

Employees with disabilities shall be held to the same performance and conduct standards as similarly situated employees without disabilities. An employee with a disability is expected to meet the same production standards, whether quantitative or qualitative, as a nondisabled employee in the same job. Lowering or changing a production standard because an employee cannot meet it due to a disability is not considered a reasonable accommodation. However, a reasonable accommodation may be requested and/or required to assist an employee in meeting a specific production standard.

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**Section 54.1.2.1 Personal Assistance Services (PAS)**

PAS will be provided to employees requiring them because of certain targeted disabilities. Medical conditions that are more likely to result in the need for PAS include those where an individual has missing limbs or paralysis due to spinal cord injury. PAS are services that help individuals, who require assistance, to perform basic activities of daily living (e.g., eating and using the restroom) in order to fully participate in the workplace. For additional information, contact the Reasonable Accommodations program office.

**Section 54.1.3**

The Agency may grant leave to accommodate an individual with a disability as follows:

- Leave Without Pay (LWOP) and/or Sick Leave may be granted for illness or disability;
- Both can be appropriately used by an employee with a disability for purposes including, but not limited to, equipment usage (prosthetic devices, wheelchairs, crutches, etc.), device repair, medical appointments and certified guide dog training, etc.

**Section 54.1.4**

The Agency agrees to provide appropriate communication services for persons with hearing loss who require such services as a RA. This encompasses the provision of interpreter services during meetings with the Union. Normally, these requests require twenty-four (24) hours advanced notice.

**Section 54.1.5**

Employees with disabilities shall be provided with equal opportunity to perform official business travel. Certain additional travel expenses that are necessary incurred to reasonably accommodate the employee's disability may be reimbursed under the Federal Travel Regulations (FTR).

**Section 54.1.6**

The Agency will provide qualified employees with disabilities full consideration for all training opportunities. Once an employee is selected for training, the Agency will provide needed reasonable accommodations to the employee to attend and complete the training, consistent with federal guidelines and laws. The Agency agrees to provide on-the-job training opportunities to qualified employees with disabilities on the same basis as nondisabled employees consistent with the Agency's operational needs.

**Section 54.2 RA Process for Employees with Disabilities****Section 54.2.1**

In accordance with DAO 215-10, the RA process begins as soon as the request for the change to the work environment or the manner or circumstances under which the position held or desired is customarily performed due to a medical condition. A request is any communication in which an individual asks or states that the employee needs the Agency to provide or to change something because of a medical condition. The requester does not have to use any special words such as "reasonable accommodation," "disability," or "Rehabilitation Act."

An employee may make a request for reasonable accommodation at any time, orally, in writing or electronically. Using Form CD-575, Written Confirmation of Request for Reasonable Accommodation is optional. An employee may make a request for reasonable accommodation to his/her supervisor, another supervisor or manager in his/her immediate chain of command, his/her Office or Division Director, the EEO office, the Reasonable Accommodation Branch (RAB), Human Resources Division, or Agency's medical staff, as applicable.

Each reasonable accommodation request received will be forwarded to the RAB and assigned to an individual Reasonable Accommodation Coordinator (RAC). The RAC works with the requesting employee and Deciding Management Official (DMO) through the interactive process. The interactive process involves the mutual sharing of information and ideas to clarify the specific nature of the disability and identify appropriate reasonable accommodations. The RAC receives the supporting documentation that may include medical information from the requester. The DMO makes the decision on reasonable accommodation requests.

Employees will be provided a reasonable amount of duty time, along with access to facsimile and/or scanning capabilities, in order to submit RA requests to the RAB.

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### **Section 54.2.2**

A family member, health professional, or other representative may request an accommodation on behalf of an employee, with the employee's consent. A medical provider's note outlining medical restrictions for an employee constitutes a request for reasonable accommodation.

Whenever possible, the Agency will confirm the RA request with the employee.

When an employee (or third Party) makes an oral request, for recordkeeping purposes, the RAC ensures that a Request for Reasonable Accommodation (CD-575) form is completed. The RAC must fill out the form if the requester does not. The requesting individual shall be provided a copy of the CD-575 and afforded five (5) business days to review and amend, a request form.

### **Section 54.2.3**

Upon receipt of the RA request, the receiving manager shall promptly forward the RA request to the RAB. Upon receipt, the RAB will assign a RAC to the request. The RAC will notify the employee's DMO of the RA request.

The RAC will send the requester the CD-575 form and a request for medical information if the disability is not obvious. If the disability is obvious or the employee has a record of the disability on file, medical documentation may not be necessary or required, at the determination of the Agency.

The requester shall submit the completed CD-575 form and medical request for information directly to the RAC. The completed CD-575 serves as a medical release for the employee as described in the CD-575.

Agency medical consultants, such as medical professionals from Federal Occupational Health (FOH) and the Agency's health units or RAC may contact the employee's medical provider directly to clarify any additional medical information that may be needed concerning the disability and/or a reasonable accommodation request.

If the employee's medical provider is unable or does not provide sufficient information/clarification regarding the RA, the RAC may require the employee to provide additional medical documentation or see a medical provider of the Agency's choice and at the Agency's expense.

RA requests will be processed according to the procedures and timeframes outlined in DAO 215-10. If additional time is necessary to respond to the request, the reason(s) for the delay and the approximate timeframe for the response will be provided to the employee in writing.

The RAC will work with the DMO and the requesting employee in the interactive process to discuss RA options, and/or to determine appropriate accommodation solution(s). It is equally incumbent on both the employee and DMO to actively participate in the interactive process in order to attain positive results.

If the DMO approves an accommodation, the RAC will send an official notice of approval, on behalf of the DMO, to the employee, and a copy to the DMO within five (5) business days of the decision.

In accordance with DAO 215-10, the approved reasonable accommodation, to the extent possible should begin or be implemented within ten (10) business days from the date of the decision and be communicated to the employee. The DMO will communicate to the RAC if other determining factors are involved that may delay the implementation of the accommodation.

#### **Section 54.2.3.1 Interim Accommodations**

The supervisor/DMO must provide an interim accommodation, absent undue hardship, when all the facts and circumstances known to the agency make it reasonably likely that the individual will be entitled to an accommodation, but the accommodation cannot be provided immediately. Note: If the employee's disability determination is in process, and an appropriate interim accommodation would not have an adverse impact on the operation of the unit, the employee should be granted the interim accommodation, but informed that this is a temporary action pending final determination of the disability and is not a reasonable accommodation.

In considering a request for RA, the RAC may work with various medical consultants, such as medical professionals from FOH and the Agency's health units, if necessary, in making a suitable determination.

#### **Section 54.2.4 Reconsideration of a Denial**

If the RA is denied, the written notice of denial will be sent to the employee with the disability including specific reasons for the denial. If an alternate accommodation is offered, the notice shall include an explanation in the written decision.

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The employee with a disability may request reconsideration of any decision within fifteen (15) business days to a designated higher level management official within the employee's chain of command. The reconsideration request must be in writing and include a copy of the decision and any additional information or argument the employee wishes to submit.

Within five (5) business days of receipt of a request for reconsideration, the designated higher level management official must provide the employee a written acknowledgment of receipt of the reconsideration request. The designated higher level management official may re-engage the interactive process, with the assistance of the Bureau RAC, to identify additional effective accommodations. The final written decision regarding the reconsideration must be issued to the employee within thirty (30) business days from the date the reconsideration request was received.

The Agency must provide the employee with information regarding the reconsideration process, the right to seek redress in the appropriate forum, which may include engaging in Alternative Dispute Resolution, the Equal Employment Opportunity (EEO) process, the Merit Systems Protection Board, or negotiated grievance under Article 12, Negotiated Grievance Procedure.

#### ***Section 54.2.5 Reassignment***

Before considering reassignment, as a RA, the DMO and RAC should first consider those accommodations that would enable an employee to remain in his/her current position. The Agency must consider reassignment when it determines there are no effective accommodations available that will permit the employee to perform the essential functions of his/her current position or that would not cause undue hardship. Reassignment is the reasonable accommodation of last resort.

The Department must consider reassignment as an accommodation prior to terminating an employee who because of a disability cannot be accommodated in his/her current position. Reassignment is required only after it has been determined 1) there are no effective accommodations that will enable the employee to perform the essential functions of his/her current position or 2) all other reasonable accommodations would impose an undue hardship. Reassignment may not be used to limit, segregate, or otherwise discriminate against an employee with disabilities.

In considering vacant positions for reassignment, the employee must be qualified for the new position and capable of performing the essential functions with or without an accommodation. There is no obligation for the Agency to assist the employee to become qualified.

The employee can be reassigned to a lower grade if there is no equivalent vacant position. The Agency is not obligated to create a new position for the employee. The Agency is not obligated to 'bump' another employee from a job in order to create a vacancy. The employee must compete for any vacant position that would constitute a promotion. Reassignment may be made outside of the employee's commuting area if the employee is willing to relocate. The Agency will not pay for the employee's relocation costs.

HR personnel should identify current vacant positions and those that should become vacant in the foreseeable future (sixty (60) calendar days) to which the employee could be reassigned.

#### **Section 54.3 Confidential Information**

The Agency will preserve the confidentiality of medical records and medical data in accordance with the Rehabilitation Act and Privacy Act of 1974, DAO 215-10, and all other applicable laws and regulations. Written permission from the employee is required for any release of medical documents and records, except where otherwise authorized by law or regulation.

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## ARTICLE 55. TEMPORARY ALTERNATE DUTY STATION (TADS)

1. A Temporary Alternate Duty Station (TADS) arrangement may be appropriate for employees with serious medical conditions or to care for an immediate family member (spouse, son, daughter, or parent of the employee) with a serious medical condition of a temporary nature. Immediate family members and serious medical conditions are defined in accordance with 5 CFR § 630, Subpart L.

Employees recuperating from a temporary illness or injury or who may be caring for an immediate family member and who are temporarily unable to perform the full range of official duties at their respective official duty location may submit to their servicing Employee Relations (ER) office a written request for a temporary work-at-home assignment for up to three (3) months. Additional time may be considered as appropriate, but under no circumstance ever to exceed six (6) months. Such requests must be accompanied by medical certification establishing the temporary limitation of the employee or an immediate family during the request period.


2. To be approved, there must be sufficient work that is commensurate with the employee working from an alternate location throughout the duration of the request period. Nonessential work assignments may be modified, as necessary, to fully enable this provision. Additional requirements are located in the U.S. Census Bureau Telework Policy, Section 7, Accommodation/Flexibilities and TADS Arrangement for Serious Medical Conditions of a Temporary Nature.
3. The employee's supervisor, in consultation with ER, will respond to an employee's request for a temporary work-at-home assignment within ten (10) workdays of receiving all required documentation. If additional time is necessary to respond to the request, the reason(s) for the delay and the approximate timeframe for the response will be provided to the employee in writing. If the request is denied, the reason(s) for the denial will be provided to the employee in writing. Denials will not be made for arbitrary reasons.
4. A request for a TADS arrangement is not considered a request for a reasonable accommodation. Nothing in this Article prohibits an employee from also seeking a reasonable accommodation.

### Section 55.1 Confidential Information

The Agency will preserve the confidentiality of employee medical records and medical data in accordance with the Privacy Act of 1974 and other applicable laws and regulations. Written permission from the employee is required for any release of medical documents and records, except where allowed by law or government-wide regulation.

## ADDENDUM A.

FORM BC-1575(T) (04-15-2025)

 <b>NEGOTIATED GRIEVANCE PROCEDURE</b>		U.S. DEPARTMENT OF COMMERCE U.S. CENSUS BUREAU		<b>1. Name of grievant (Last, first, middle initial)</b>	
Refer to Article 12 of the Reference Negotiated Agreement for information regarding informal grievances.					
<b>2. Statement of grievance – State specifically when and in what manner grievance arose.</b>					
Is supporting documentation attached? <input type="checkbox"/>					Enter date of instance/issue →
<b>3. Relief sought</b>					
<b>4. Issue</b> What in the agreement, regulation, or condition of employment has been violated?					
<b>5. Signature of grievant</b>  Date _____		<b>6. Designation of representative</b> <input type="checkbox"/> Y <input type="checkbox"/> N		<b>a. Name</b> _____ <b>b. Signature</b> _____ Date _____	
<input type="checkbox"/> Step (1) Filed: Date _____ <input type="checkbox"/> Step (2) Filed: Date _____ <input type="checkbox"/> Step (3) Filed: Date _____					
<b>TO BE COMPLETED BY STEP (1) DECIDING OFFICIAL</b>					
<b>7. Name</b>			<b>8. Title</b>		
<b>9. Date</b> <b>a. Grievance meeting</b> _____			<b>b. Decision to grievant</b> _____		
<b>10. Decision</b> Mark (X) one			<input type="checkbox"/> Grievance sustained <input type="checkbox"/> Grievance denied <input type="checkbox"/> Other		
<b>11. Summary of step (1) decision</b>					
<b>TO BE COMPLETED BY GRIEVANT</b>					
<b>12. Relief offered is</b> Mark (X) one		<input type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable		<b>a. Signature of grievant or representative</b> _____	
<b>b. Date</b> _____					
<b>TO BE COMPLETED BY STEP (2) DECIDING OFFICIAL</b>					
<b>13. Name</b>			<b>14. Title</b>		
<b>15. Date</b> <b>a. Grievance meeting</b> _____			<b>b. Decision to grievant</b> _____		
<b>16. Decision</b> Mark (X) one			<input type="checkbox"/> Grievance sustained <input type="checkbox"/> Grievance denied <input type="checkbox"/> Other		
<b>17. Summary of step (2) decision</b>					
<b>TO BE COMPLETED BY GRIEVANT</b>					
<b>18. Relief offered is</b> Mark (X) one		<input type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable		<b>a. Signature of grievant or representative</b> _____	
<b>b. Date</b> _____					

---

**ADDENDUM A.**

<b>TO BE COMPLETED BY STEP (3) DECIDING OFFICIAL</b>			
<b>19.</b> Name		<b>20.</b> Title	
<b>21.</b> Date		<b>22.</b> Decision	
<b>a.</b> Grievance meeting	<b>b.</b> Decision to grievant	Mark (X) one <input type="checkbox"/> Grievance sustained <input type="checkbox"/> Grievance denied <input type="checkbox"/> Other	} Explain in item 23
<b>23.</b> Summary of step (3) decision			
<b>TO BE COMPLETED BY GRIEVANT</b>			
<b>24.</b> Relief offered is Mark (X) one <input type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable	<b>a.</b> Signature of grievant or representative		<b>b.</b> Date
Remarks			





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