

Union Final Offer

ARTICLE 5

EMPLOYEE RIGHTS AND RESPONSIBILITIES

SECTION 1

As provided by 5 U.S.C. § 7102, each employee shall have the right to form, join or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right, except as otherwise provided under 5 USC Chapter 71. Such rights include the right:

- A. To act for a labor organization in the capacity of a representative and the right in that capacity to present the views of the labor organization to the Employer, the heads of agencies, and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and
- B. To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this Agreement.

SECTION 2

- A. In accordance with 5 U.S.C. section 7114(a)(2)(B), employees have the right to Union representation upon their request, at any examination of them by a representative of the Employer in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary or adverse action against her/him. The Employer recognizes the need for these examinations to be conducted in a manner that assures that the privacy of the employee is protected.
- B. The Employer will electronically distribute a semi-annual notice to all employees advising them of their right to representation in such examinations and investigations if they so request such representation.
- C. If an employee requests Union representation under this Article and a Union representative is not available for whatever reason (including non-release from duty), the examination will be delayed ~~terminated~~ for a reasonable period of time, generally not to exceed one (1) workday to secure a Union representative. ~~If, however, the examination will be in a field office outside of a regional or district office, or in a headquarters office located in the field, the examination may be postponed no longer than two (2) workdays or sooner pending travel authorization in order for the employee to secure a representative.~~
- D. If the Union cannot physically attend the examination, they may participate by telephone or video conference if available. The Union may also designate an ad hoc representative to accompany the employee in person. The ad hoc representative must request official time pursuant to Article 10, Union Representatives/Official Time of this Agreement.

- E. The Employer recognizes the need for these examinations to be conducted in a manner that assures that the privacy of the employee is protected. ~~When possible, conduct these meetings outside the normal workplace of employee.~~

SECTION 3

The Agency's OIG and OIA forms shall be used exclusively in conjunction with this article.

These forms are attached for information purposes only. ~~The parties recognize that these forms may need to be updated and/or changed to comply with requirements by law. Any changes to such forms will be provided to the Union in advance, and subject to any legal bargaining obligations.~~ The Administrative Warning form will be used when an employee is not suspected of a crime and the Employer is compelling the employee to answer questions (this is used for non-suspects and for administrative investigations).

- A. An employee being interviewed by a representative of the Employer in connection with either a criminal or non-criminal matter has certain entitlement/rights when any representative of the Agency, e.g., Inspector General, contractor, etc., is conducting the interview. This section sets forth those rights as well as the procedures that, unless precluded by law, must be followed by the Employer representative conducting the interview.
- B. When an employee is interviewed by the Employer, and the employee is the subject of an investigation, the employee will be informed of the general nature of the matter (i.e., criminal or administrative misconduct) being investigated and be informed whether or not the interview is related to possible criminal misconduct by the employee. This information shall be on a form (see Appendix 5-1), which, unless precluded by law, the employee will initial and date at the outset of the interview.
- C. (Weingarten Rights) When the Employer conducts an interview of an employee regarding a non-criminal matter and the employee is a potential recipient of any form of discipline or adverse action, the Employer shall advise the employee of his/her right to Union representation prior to the commencement of questioning. Failure on the part of the Employer to inform the employee of this right at the time of the interview will not be the sole basis for a grievance.
- D. (Third Party Witness Interviews) Prior to beginning interviews with employees who are being interviewed as third-party witnesses, the Employer, unless precluded by law, will provide employees with a form (such as Appendix 5-3), which shall be signed and dated by the employee at the outset of the interview.
- E. (Miranda Rights) When an employee who is the subject of a criminal investigation is in custody by the Employer, she/he shall be informed of his/her Constitutional rights.

Unless precluded by law, the Employer will give the statement in writing on a form (such as Appendix 5-4) to secure the employee's signature prior to commencement of questioning.

- F. (Beckwith Rights). In a non-custodial interview involving possible criminal matters, an employee will be advised of his/her rights and the consequences of refusing to answer the questions posed to him/her on the grounds that the answers may tend to incriminate him. The information shall be on a form (Appendix 5-5), and unless precluded by law, the Employer will provide the statement in writing for the employee to sign prior to the commencement of questioning.
- G. (Kalkines Rights). In an interview involving possible criminal matters, where prosecution has been declined by appropriate authority, an employee will be required to answer questions only after the Employer representative has provided the employee with the appropriate assurances. Prior to requiring an employee to answer under such circumstances, the Employer representative shall inform the employee that his/her statements concerning the allegations during the interview cannot and will not be used against him in a subsequent criminal proceeding, except for possible perjury charges for any false answers given during the interview. This information shall be on a form (such as Appendix 5-6) which, unless precluded by law, shall be signed and dated by the employee at the outset of the interview.
- H. During investigatory interviews involving criminal conduct, an employee's refusal to respond to questions based on a proper invocation of the privilege against self-incrimination may not be used as the sole basis for disciplinary or adverse action.
- I. When a Union representative represents an employee during any investigation, the role of the representative includes, but is not limited to, the following rights:
 - 1. to clarify the questions;
 - 2. to clarify the responses;
 - 3. to assist the employee in providing favorable or extenuating facts;
 - 4. to suggest other employees who may have knowledge of relevant facts;
 - 5. to request a caucus for a reasonable period of time; and
 - 6. to advise the employee during the examination or a caucus.

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

- J. The Employer recognizes that administrative interviews by officials of the Employer

are strictly limited to matters of official interest to the Employer and, accordingly, will not address private matters outside the appropriate scope of the investigation.

SECTION 4

- A. The Employer retains the right to hold counseling sessions with employees without the presence of a Union representative. Counseling sessions may include informal discussion between individual employees and their supervisors regarding the employee's performance; work assignments and procedures; application of established office policies and practices; leave practices and requests; and discussions of a personal nature. The Employer may not use these counseling sessions to convey changes to personnel policies, practices or general working conditions that are required to be discussed in formal meetings.
- B. When a counseling session includes (either in person or via telephone) a representative from Employee or Labor Relations, the employee will be given an opportunity to have Union representation present prior to the start of the session. For all other counseling sessions where there is more than one management official or representative present (either in person or via telephone), the employee may request Union representation. If Union representation is requested, the meeting will not be delayed more than one (1) workday.

SECTION 5

- A. The Employer recognizes and respects the dignity of employees in its formulation and implementation of personnel policies and practices and conditions of work. It is the responsibility of all employees and supervisors to control their behavior at all times and abide by the Standards of Conduct of the Department. The Employer, employees, and the Union will treat each other in a professional, businesslike and courteous manner. The Parties recognize the need for supervisors, management officials, Union representatives and employees to treat each other and members of the public with courtesy, consideration and respect. However, nothing in this section shall be construed to waive the right of the Employer and the Union to engage in robust debate.
- B. The Parties agree that meetings between supervisors, employees, and/or the Union should be as non-confrontational as possible. It is the responsibility of all employees and supervisors to control their behavior at all times. In a meeting with his/her supervisor or management official, if any participant reasonably believes that a physical confrontation or verbal abuse is imminent, s/he may suggest a reasonable break in the meeting for "cooling off." Under such circumstances, the Parties recognize that such a break may be conducive to effective employee/supervisor relationships, and the supervisor will not arbitrarily deny a request for such a break. If the supervisor approves a break, the meeting will be resumed as soon as practicable following the "cooling off" period.

SECTION 6

Employees are required to carry out the lawful instructions of a supervisor or any other HHS

management official with real or apparent authority. If there is a disagreement between the employee and the supervisor or other management official, the employee will comply with the instructions and, if desired, challenge the matter later. An employee will not be disciplined or retaliated against solely for carrying out such an instruction. The Employer is not precluded from imposing discipline on the employee if it is determined that the manner in which the instruction was carried out was inappropriate under the circumstances. Nothing in this section absolves the employee from criminal or civil liability for her/his actions.

SECTION 7

The rights and protections established in 5 U.S.C. Section 2301 (b), Merit System Principles, and 5 U.S.C. Section 2302(b), Prohibited Personnel Practices, are hereby incorporated into this Article. Attachment (5-7) enumerates these statutory rights.

SECTION 8

Employee participation in the Combined Federal Campaign, blood drives, and other solicitations will be voluntary, and employees will not be coerced to contribute. A supervisor will not solicit pledges or contributions from an individual employee under his/her supervision. If the Employer conducts pep rallies, informational meetings, or other activities, e.g. auctions, they will in no case lessen an employee's right to take lunch apart from attending the rallies or meetings. The Employer will seek employee-volunteers prior to assigning employees to perform functions (e.g., CFC key worker or coordinator).

SECTION 9

An employee cannot be required to tell a supervisor the specific circumstances surrounding his/her need to contact a Union representative. When an employee wishes to request permission to leave the work site to contact a Union representative, he/she must inform his/her supervisor only of the general nature of the visit and the estimated time of return as mutually agreed. The employee must receive prior approval from the supervisor to leave the work site and, where possible, s/he must give the supervisor a telephone number at which s/he may be reached while absent in case of urgent work-related need. The amount of time spent will be reasonable. The employee's request will be granted and may be delayed if the employee's absence would hinder the accomplishment of essential workload requirements. Examples of hinder include an inability to complete specific or previously assigned projects timely or when the employee's absence would adversely affect needed physical office coverage and cannot be otherwise accommodated. If permission is not granted, the supervisor will identify the time period when the employee may meet his/her Union representative. Only under compelling circumstances will the supervisor require the delay to exceed one (1) workday.

SECTION 10

- A. If an employee does not receive a salary check (including direct deposit) on the designated date, the employee may contact the local administrative office for the appropriate forms necessary to request a replacement check. The Employer will process fully completed and

signed forms expeditiously and in accordance with government-wide regulations. The Employer will urge the payroll office to process the information within two (2) workdays of receipt.

- B. When an employee does not receive a salary check (including direct deposit) the employee may request an emergency payment to avoid financial hardship. In these instances, the Employer will provide written information on these procedures
- C. To prevent over/underpayments of pay and to assure timely correction of payroll errors, employees are urged to review their bi-weekly Earnings and Leave Statements and notify their timekeeper and/or supervisor as soon as practicable of any discrepancy thereon.

SECTION 11

- A. It is recognized that all employees are expected to pay promptly all just financial obligations.
- B. The Employer agrees that it will not otherwise disclose or discuss the employee's financial information without the explicit signed, written consent of that employee or either a court order or other mandatory operation of law. Nothing in this section may be construed to: prevent the Employer from verifying that an individual is an employee, or providing her/his grade and/or the gross amount of her/his pay, or both;
- C. Nothing in this section may be construed to: preclude the Employer from complying with an order from a court of competent jurisdiction instructing the Employer to comply with legal process brought for the enforcement of an employee's legal obligations to provide child support and/or alimony payments and other garnishments, in compliance with government- wide laws, including 5 U.S.C. 5520a, 42 U.S.C. 659, and such rules, regulations, and executive orders as may from time to time be promulgated there under.
- D. Nothing in this section may be construed to: inhibit the Employer from enforcing rules, regulations, or policies governing use of Government-issued travel or purchase charge cards, phone cards or equipment.

SECTION 12

The Employer will generally not require an employee to submit to a polygraph examination. On rare occasions, such a test may be requested by law enforcement/special agents of the Department or the Federal Government. Employees who refuse to submit to a polygraph examination will not be disciplined or subjected to adverse action based on that declination.

SECTION 13

Employees are accountable to the Employer for performance of their officially-assigned duties and responsibilities. In the performance of those duties and responsibilities, employees will be governed in their conduct by government-wide, HHS-wide standards of ethical conduct.

SECTION 14

Employees may decorate their offices and individual work areas, but decorations may not interfere with or violate the following:

1. the Employer's method of conducting business;
2. the rights of other employees and the public;
3. federal property, health and safety requirements and facility maintenance needs for government owned and leased space;
4. nothing can be posted in public spaces unless sanctioned by facility management;
5. commonly accepted standards of good taste; and
6. employees are expected to maintain an orderly office environment.

All employees that are certified to perform CPR may display symbols for CPR in their offices and individual work areas.

SECTION 15

All employees will be given three (3) hours of duty time during the thirty days after implementation of this Agreement to read its provisions. This time must be used to read the Agreement at the employee's workstation and is subject to supervisory approval. At the Union's sole option, it can substitute these three (3) hours with a two (2) hour contract training session within the first thirty (30) days of implementation.

- A. All new employees to the bargaining unit who have not otherwise participated in an NEO will also be provided three (3) hours of duty time to read the Agreement, within the first two weeks of their start date as a bargaining unit employee, subject to supervisory approval. At the Union's sole option, it can substitute these three (3) hours with an Article 13 two (2) hour contract training.

SECTION 16

The Employer has a legitimate work-related basis for monitoring employees' use of Government property and equipment, and employees have no right to privacy when using such property and equipment.

This section applies to such things as: employees' calls, messages, and other communications, whether by telephone, facsimile, e-mail, or any other media; and employees' desks, computers, files, furniture, and work spaces.

The Employer has the right to look in and through an employee's work area for official business purposes, such as looking for needed files or assignments when an employee is not in the office.

When the Employer exercises its right to search an employee's possessions at the work site in a non-criminal matter, the employee will be allowed to be present during the search if the employee is otherwise present at the work site. The employee shall, upon request, be given an opportunity to be represented by the Union during the search, provided that the supplying of such representation by the Union shall not unduly delay the search or impede the purpose for which the search is conducted. If advance notification is not possible, the Employer will timely send a follow-up email to the employee notifying him/her that the Employer went through his/her non-electronic material and identify any files or materials that were removed.

SECTION 17

A. This section applies to every significant FDA decision on any matter under the laws administered by the Commissioner, whether it is raised formally, for example, by a petition or informally, for example, by correspondence. Under 21 CFR 10.70, FDA employees responsible for handling a matter are responsible for insuring the completeness of the administrative file relating to it. The file must contain:

- (1) Appropriate documentation of the basis for the decision, including relevant evaluations, reviews, memoranda, letters, opinions of consultants, minutes of meetings, and other pertinent written documents; and
- (2) The recommendations and decisions of individual employees, including supervisory personnel, responsible for handling the matter.
 - (a) The recommendations and decisions are to reveal significant controversies or differences of opinion and their resolution.
 - (b) An agency employee working on a matter and, consistent with the prompt completion of other assignments, an agency employee who has worked on a matter may record individual views on that matter in a written memorandum, which is to be placed in the file.
- (3) A written document placed in an administrative file must:
 - (a) Relate to the factual, scientific, legal or related issues under consideration;
 - (b) Be dated and signed by the author;
 - (c) Be directed to the file, to appropriate supervisory personnel, and to other appropriate employees, and show all persons to whom copies were sent;
 - (d) Avoid defamatory language, intemperate remarks, undocumented charges,

or irrelevant matters (e.g., personnel complaints);

- (e) If it records the views, analyses, recommendations, or decisions of an agency employee in addition to the author, be given to the other employees; and
 - (f) Once completed (i.e., typed in final form, dated, and signed) not be altered or removed. Later additions to or revisions of the document must be made in a new document.
- B. FDA employees working on a matter have access to the administrative file on that matter, as appropriate for the conduct of their work. FDA employees who have worked on a matter have access to the administrative file on that matter so long as attention to their assignments is not impeded. Reasonable restrictions may be placed upon access to assure proper cataloging and storage of documents, the availability of the file to others, and the completeness of the file for review.
- C. Employees will be notified in writing of their right to record their own individual views on the matter in a written memorandum, which shall be placed in the file. Where the Employee is in a concurrence chain (including situations where the employee would be the originator of the document), s/he will not be required to concur on any approval document with which s/he professionally disagrees.
- D. In accordance with 21 CFR 10.75, an employee may request a review of any decision made by any FDA employee, other than the Commissioner. The review will be made by consultation between the employee and the supervisor or by review of the administrative file on the matter, or by both. The review will ordinarily follow the established Agency channels of supervision or review on that matter.
- E. In accordance with 21 CFR 10.75, when an interested party outside the FDA requests internal Agency review of an employee's decision, including any complaint made orally or in writing, the employee will be notified of the request and will be directed to the appropriate administrative file on the matter.
- F. When another FDA employee requests internal agency review of an employee's decision, including any complaint made orally or in writing, the employee will be notified in writing of the request and will be directed to the appropriate administrative file on the matter.
- G. No employee will be penalized by the Employer for exercising his or her rights under this Section.

SECTION 18

Upon request by the Employer, an employee must provide her/his home telephone, pager or cell phone number. This information will be safeguarded by the Employer and used for official

business purposes only. Employees may provide an additional contact number.

SECTION 19

- A. Nothing in this Agreement may be construed to preclude an employee from exercising grievance or appellate rights established by law, rule, or regulation, except in the case of grievance or appeal procedures negotiated under this Agreement.
- B. A grievance filed in good faith by any employee will not cause any adverse reflection in her/his standing with her/his supervisor or her/his loyalty or desirability to the organization. The Employer will not impose any restraint, interference, coercion, discrimination, or reprisal against any employee or Union representative for:
1. designating the Union for the purpose of presenting to the Employer or any government agency or official any matter of dissatisfaction, or
 2. presenting any relevant information concerning any matter for which remedial relief is available under this Agreement. Nothing in this section may be construed to absolve an employee from responsibility for disclosing information which is not permitted by law, rule, or regulation to be disclosed.

SECTION 20

The Parties agree that:

1. It is important for supervisors and employees to understand clearly their rights and responsibilities about the use of Union representatives; and
2. In addition to meetings which the Union has a statutory right to attend and meetings for which an employee has a right to request Union representation, an employee may request if a Union representative can participate in other types of Employer-initiated meetings. The Employer will seriously consider the employee's request, as a Union representative's presence may be useful in conducting a calm and objective discussion. However, a decision to permit Union presence at these meetings rests solely with the Employer.

SECTION 21

In addition to salary direct deposit and allotments for Union dues, charity, and savings bonds, each employee may elect to have up to the maximum number of discretionary allotments (savings-type and/or for purposes other than savings) permitted by the capacity of the payroll system in use by the Employer at the time any allotment request is made.

Bold language is HHS proposals NTEU accepts. Plain text is current CBA language. Underline is NTEU proposed language. Strike-through is rejected language in current Article.

ARTICLE 7

UNION RIGHTS

SECTION 1

A. It is agreed that the Union shall be given the opportunity to be represented at all formal discussions between the Employer and the employee concerning any grievance, or any personnel policy or practices or **other general conditions of employment, as provided for in 5 U.S.C. 7114(a)(2) and applicable regulations, matters affecting the general working conditions of employees in the unit.**

~~B. Factors that indicate whether a meeting is "formal" include, but are not limited to:~~

- ~~1) the status of the individual who held the discussion(s);~~
- ~~2) whether any other management representatives attended;~~
- ~~3) the location of the discussion(s);~~
- ~~4) how the meeting was announced;~~
- ~~5) the length of the discussion;~~
- ~~6) whether an agenda was established; and~~
- ~~7) the manner in which the discussion(s) was conducted.~~

B. Factors that indicate whether a meeting is "formal" include, but are not limited to:

- 8) the status of the individual who held the discussion(s);
- 9) whether any other management representatives attended;
- 10) the location of the discussion(s);
- 11) how the meeting was announced;
- 12) the length of the discussion;
- 13) whether an agenda was established; and

the manner in which the discussion(s) was conducted.
[NTEU asserts SQ/rollover in 1B.]

C. Generally, The Employer will notify the Union in writing of any scheduled formal meeting ~~one calendar week in advance of the meeting or on the day the meeting is scheduled, whichever period is shorter, but in no case shall notice be fewer than two (2) workdays in advance of the meeting, except in emergency situations in advance. If possible, the notice will be given at least two (2) workdays in advance of the meeting if the meeting is scheduled to take place in fewer than five (5) workdays. If the meeting is scheduled to take place in five (5) workdays or more, notice will be provided to the Union within one (1) workday of the date on which the meeting gets scheduled.~~ Notice to ~~into~~ each chapter shall go to the representative(s) designated by the Union. The local Chapter may designate a union mailbox to receive such notifications. In the absence of such written description, notice shall go to the chapter president. If available, the notice shall include an agenda, ~~and a copy of any written materials that will be distributed at the meeting.~~ **The Union will, where practicable, notify in writing the identified management official and the Labor Relations Specialist of the Union's designated representative who will attend the meeting at least one (1) work-day in advance of the meeting, or if less notice was provided to the union, then as soon as possible.**

D. The Employer will acknowledge the attendance of the designated Union representative at the start of the formal meeting. The Union representative will be given the opportunity to ask relevant questions on behalf of the employees and may make a brief statement of the Union's position on the matter under discussion. At any formal meeting, the Union representative may inform employees that if any of them wishes to discuss the meeting topics with him or her further or in private, the employee upon supervisory approval, may come to the Union office or other area to meet with the Union representative.

E. All settlement agreements relating to complaints and grievances affecting working conditions of bargaining unit employees will be forwarded to the appropriate NTEU chapter president or the NTEU National President, with a copy to the appropriate servicing personnel office, for a seven (7) day period of consideration. NTEU will notify the Agency if it alleges that the settlement conflicts with any negotiated agreements between the HHS and NTEU or other non-discretionary requirements. Failure of the Union to allege within the seven day consideration period that a conflict exists shall be deemed acceptance of the settlement agreement.

Settlement agreements will contain the following statement:

This settlement agreement is subject to approval for compliance with negotiated agreements between HHS and NTEU. Accordingly, it will be forwarded to the appropriate NTEU chapter president or the NTEU National President, with a copy to the appropriate servicing personnel office, for a seven (7) day period of consideration. If NTEU alleges the settlement conflicts with any negotiated agreements between the HHS and NTEU, or other non-discretionary requirements, you will be notified.

[NTEU proposes status quo for 1.D & E]

SECTION 2

All requests for data made by the Union under 5 U.S.C. § 7114(b)(4) will be so identified and will be processed in accordance with all applicable laws, including case law, regulations, and contractual obligations. ~~When the Union has demonstrated a particularized need and the requested information cannot be provided within fourteen (14) work days, the Union will have the option of either postponing or amending any filing and/or other deadlines relating to the request.~~ When the Union has demonstrated a particularized need and the requested information cannot be provided within fourteen (14) work days, the Union will have the option of either postponing or amending any filing and/or other deadlines relating to the request.

[NTEU proposes status quo on last sentence of Section 2.]

SECTION 3

The Union may refuse to represent any bargaining unit employee in any proposed disciplinary actions, any statutory appeals, or any matter outside this Agreement, which includes the following:

- Adverse actions such as removals, demotions, etc.
- EEO complaints
- Unacceptable performance actions such as removal or demotion
- Workers compensation cases
- Allegations of prohibited personnel practices

SECTION 4

All NTEU field representatives and NTEU National Negotiators **who are not current federal employees will be afforded the same access to federal facilities as is afforded to members of the general public and must comply with all security procedures and Rules and Regulations governing conduct on Federal property.**

~~who handle HRIS matters will be provided with access identification cards for the buildings that contain bargaining unit members and will be required to complete background investigations consistent with law and generally applicable Agency internal security policy and follow the appropriate local sign-in procedures, as appropriate. If the NTEU representative has not undergone the background investigation, s/he will have the same access as other members of the general public.~~

SECTION 5

If the local chapter requests, the Employer will include with its commitment letters a brochure, agreed

~~to by the National parties, which outlines the benefits of membership in the Union.~~

[NTEU agrees to strike Sec. 5]

SECTION 6

Union representatives may address a training class during the non-duty hours of the class members.

SECTION 7

One (1) week of each year, to be agreed upon between the parties annually at the national or local level, will be recognized by the Employer as Labor Recognition Week. During that week, local chapters may use the Employer's cafeterias and break rooms to set-up exhibits publicizing the contributions of organized labor, particularly NTEU, to society. Meeting rooms may also be made available. All employees may request up to one (1) hour of administrative time to participate in Labor Recognition Week activities. Local chapters shall be provided with official time consistent with Article 10.

SECTION 8

- ~~A. The Employer agrees to authorize leave to any Union representative for attendance at Union meetings, or portions of meetings, which constitute internal Union business, unless the employee's absence would substantially hinder the accomplishment of essential workload requirements. Union Chapters will notify the Employer as to which representatives will be attending such meetings as early as possible, normally at least ten (10) workdays preceding scheduled departure. Late notice shall not be the sole ground for denying leave requests.~~
- ~~B. Additionally, the Employer will grant the Union officers and Union representatives leave to perform other internal Union business, unless the employee's absence would substantially hinder the accomplishment of essential workload requirements.~~
- ~~C. For the purpose of this Section, employees may use annual leave, leave without pay, earned credit hours, earned compensatory time, or any combination thereof.~~

[NTEU agrees to strike Sec. 8]

ARTICLE 9

UNION ACCESS TO EMPLOYER SERVICES

SECTION 1

The Employer will permit reasonable use of copying equipment to reproduce material related to labor-management relations program. The Employer reserves the right to insure that all materials being produced relate to the labor management relations.

SECTION 2

The Union may use the Employer's mailing system including e-mail and, where necessary, the external postage-paid mail system, to transmit or receive representational correspondence concerning the Employer's labor relations program. The Union is not authorized to these mail systems for internal Union business (including but not limited to the solicitation of membership, election of union officials, and collection of dues) as set forth in 5 U.S.C. §7131(b). The Employer accepts no responsibility for lost, damaged, opened or misrouted mail. In no case will the costs be more than nominal.

SECTION 3

The Employer agrees to provide the Union access to all current written issuances of covered operating divisions, as well as new issuances, updates, and amendments on personnel policies, practices, and working conditions and, upon request, to furnish the Union one (1) copy of the above, which may be in electronic form. The Employer will timely respond to such requests.

SECTION 4

- A. The Employer will distribute a hardcopy of this Agreement to each current bargaining unit employee represented by NTEU and will provide one hundred (100) copies to each of the Washington, D.C. headquarters chapters, except Chapter 282, to which the Employer shall provide two hundred (200) copies and Chapter 286, to which the Employer shall provide fifty (50) copies; one hundred (100) copies to NTEU's National Office; and fifty (50) copies to all other chapters. The printed Agreement will contain an alphabetized index and a table of contents.
- B. The Employer will also provide to National NTEU one (1)~~25~~ copies of the Agreement on CD in the most current Microsoft Word version.
- C. The Employer will be responsible for providing copies of this Agreement in alternative formats, e.g., Braille, etc. if requested by a disabled employee.

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- D. The Employer will reissue a hardcopy of only those articles that change as a result of any midterm bargaining outlined in Article 2 as a supplement. The Employer will distribute a hardcopy of the supplement in the same manner as it distributed the original Agreement.

SECTION 5

- A. All Union communications will clearly identify the Union as the source of the communication.
- B. The Union's usage of Employer services not addressed in this Article is limited to those matters for which official time is authorized in accordance with Article 10, Union Representatives/Official Time, of this Agreement.

SECTION 6

- A. The Union shall be permitted to maintain all offices and space it currently possesses, at no charge. This space is provided for the exclusive use of the Union. Furthermore, the Union shall have the right to have the same number of computers, printers, and other equipment as it currently has. The Union shall also have the right to retain all existing computer/internet access rights, telephone lines, and voicemail boxes.
- B. At a minimum, each union office shall be furnished with a desk, desk chair, three (3) regular chairs, a four/five (4/5) drawer lockable cabinet, a telephone, a minimum of two (2) telephone lines, a computer or laptop (subject to the requirements of Section D below), a laser printer, the Employer's network and internet access, voicemail, and connections for the operation of the above-mentioned equipment.
- C. The local chapter may negotiate, however, at its sole option, for additional space if the local chapter does not have an office at every location where there are more than Sixty (60) bargaining unit employees represented by the chapter. Additionally, Section 6A above notwithstanding, if there is a relocation, the Union may, among all other negotiable issues, bargain for additional offices space.
- D. The Employer shall ensure that the Union's government-issued computer or laptop functions properly. Computers that do not function properly will be serviced or replaced as appropriate by the Employer.
- E. Union representatives will be given access to copy equipment, computers and fax machines in their local working areas for representational purposes.
- F. Because of the need to conduct some business in private, the Employer will give the Union access to private space/conference rooms on an "as needed" basis. The Union may use the Employer's conference rooms for representational discussions between employees and Union officials provided the conference space is available and provided the Operating Division occupying that space determines the conference

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room is not needed for Employer work at the time requested. The Union will adhere to the conference room reservation process in place where the conference space is located. Conference rooms or any other Employer space may not be used for any non-representational activities (e.g., internal union business activities).

- G. The Employer will establish separate e-mail accounts for Union representatives for labor-management representational purposes upon request.
- H. If Employer laptops are available, Union representatives may take them on travel to conduct labor-management business. Where the Employer's IT supports Wi-Fi, the Employer will provide Wi-Fi cards for these laptops.
- I. Any use of conference space shall be at no cost to the Union, where there would be otherwise no cost to the Employer.

SECTION 7

- A. The Employer will also ensure that internet access allows the Union access to the NTEU website (www.nteu.org). The Employer will maintain a clearly titled and appropriately positioned link from its Intranet site as of the date of execution of this contract to the NTEU and NTEU chapters' home pages for ease and convenience of access by employees. The Union will maintain a link from the NTEU web site to the HHS Internet site as of the date of execution of this contract.
- B. Union transmissions (including electronic mail) are subject to the same standards that apply to all users. The Union may use broadcast e-mail (i.e., e-mails to broad groups of employees as distinguished from e-mails to one or a few addresses about specific representational matters) to communicate with bargaining unit employees concerning general representational matters related to the Employer's labor relations program. Union broadcast e-mails are subject to the same content requirements and must meet the same standards as material posted on bulletin boards.

The Union agrees to furnish the Employer (or the Employer's designated representative) with broadcast e-mails (and any attachments) for compliance review at least one (1) day before they are sent to employees.

SECTION 8

- A. The Employer will provide the Union with one-third (1/3) of the bulletin board space on all covered operating division bulletin boards, including bulletin boards in the HR offices, except where current practices permit a different arrangement. Existing local practice will continue with respect to what constitutes the Employer's official bulletin boards.
- B. The Union agrees to maintain its bulletin board in a timely, neat, and orderly condition. The posting of material on the bulletin board will be accomplished at the Union's

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expense, and the Union will ensure that no posting will violate the law or security of the Employer, or contain or libelous material. All postings will clearly identify the Union as the source of the material.

- C. Where permitted by the facilities or building management, the Union may also locate one (1) bulletin board per floor occupied by employees. The Union will pay for the boards and cost of installation. The board(s) will be for the exclusive use of the Union.
- D. The Employer will permit the Union to distribute Union literature in work areas during the non-duty time of the employees distributing the literature, where such distribution does not cause a disruption of the work flow of the Employer. Employees are advised not to read the material during work time.
- E. The Union agrees to furnish a copy of any material posted or distributed to the Employer or designee, normally at least one (1) workday in advance.

SECTION 9

~~NTEU National A designated Union official in each chapter~~ may request annually a schedule of authorized bargaining unit positions. Such schedule will include a breakdown by classification series, grade and step levels, post-of-duty, and number of positions occupied.

ARTICLE 10

UNION REPRESENTATIVES/OFFICIAL TIME

SECTION 1

This Article governs the use of official time for bargaining unit representational functions performed by employees. The Employer and the Union recognize that the use of official time to conduct authorized representational activities is in the public interest. The Parties share the responsibility to ensure that such time is used effectively and appropriately accounted for.

SECTION 2

- A. For purposes of this Article the term "steward" and "representative" are synonymous. Each NTEU Chapter may designate one (1) Union steward for every forty (40) bargaining unit employees or major fraction (51%) thereof. This calculation notwithstanding, each Regional Office, District Office/Laboratory, and Field Office will be entitled to two (2) stewards. Chapter Presidents are in addition to the 1:40 ratio or minimum of two stewards.
- B. The Union has the right to appoint any BUE to act as an ad hoc assistant steward solely for the purpose of covering a formal meeting in any location where there is no available designated steward. The ad hoc assistant steward's role will be strictly limited to attendance at the formal meeting. The Union will notify the Employer prior to the commencement of the formal meeting as soon as practicable of the assistant steward's assignment. ~~to the formal meeting, but no advance notice shall be required since the assistant steward will not be performing any additional representational functions.~~ Assistant stewards (also known as "ad hoc" stewards) are not included in the 1:40 ratio.
- C. The Union has the right to appoint stewards from any Operating Division. Stewards are authorized to perform any representational functions on behalf of the Union or any bargaining unit employee. Subject to Section 3 below, the Union has the right to make changes to its appointments of stewards at its sole discretion.
1. However, in order to receive reimbursement under §10 of this Article:
 - a. In HHS Regions with 1,000 or more bargaining unit employees, the representative must be from the same region as the issue or employee involved;
 - b. In HHS Regions with less than 1,000 bargaining unit employees, the representative may be from a contiguous region;

- c. For the purposes of this section, Region 3 includes HHS employees in the District of Columbia;
- d. As exceptions to a. and b. above, the representative may come from any location if that will involve a lesser cost to the Agency.

D. Retired employees serving as officers and as stewards will be granted:

- 1. Access to agency facilities on the same basis as in the terms of the 2011 Settlement of ULP charge WA-CA-11-033, as follows: ~~which terms are:~~
 - a) The Agency will recognize HHS retirees as Union representatives when fulfilling their responsibilities as representatives pursuant to the parties' collective bargaining agreement and the Federal Service Labor-Management Relations Statute.
 - b) Non-employee Union representatives will be granted access to HHS facilities in accordance with the security procedures for visitors of the facility and consistent with the access granted to other non-employee visitors. It is agreed that non-employee representatives will conduct themselves in accordance with the applicable conduct rules and/or rules of behavior at the respective HHS facilities. It is the responsibility of NTEU to ensure that any and all of their representatives are aware of HHS facility codes of conduct and rules of behavior.
 - c) Non-employee Union representatives will adhere to and be bound by the provisions of the NTEU/HHS Consolidated CBA when acting in their roles as union representatives. In the event that the Agency believes that non-employee Union representatives are violating the NTEU/HHS Consolidated CBA, the Agency may exercise its right to address such alleged actions under the parties CBA or the Federal Service Labor-Management Relations Statute.

In cases where the Union requests additional access, the Agency will grant the additional access when needed for a valid representational function and it can be reasonably accommodated.

- 2. Access to agency email and other services provided to the Union under Article 9 if they have completed required background investigations and other applicable security procedures.

The Agency may revoke these grants for abuse or other valid business reasons.

SECTION 3

- A. The Union agrees to provide the Servicing Human Resources Center Labor Relations Officer with a written listing of its Union representative(s) along with a description of

their individual Union assignments no later than four (4) weeks after the effective date of this Agreement. The Union will also notify the Employer's designated contact person in writing of other Union representatives who may request official time, along with a general description of their individual Union assignments. Changes will be submitted to the Servicing Human Resources Center Labor Relations Officer generally not less than two (2) workdays prior to the assumption of representational responsibilities by any new representatives, except for ad hoc assistant stewards (or ad-hoc) identified in Section 2B and 2C above. The Employer will not approve such official time until those written notices are received by the Servicing Human Resources Center Labor Relations Officer. The Employer will not unduly delay approval.

- B. No Union representative will be disadvantaged in the assessment of his/her performance based in his/her use of documented official time when conducting labor-management business authorized by this Article. However, it is understood that performance problems unrelated to the use of official time may be addressed in accordance with other relevant provisions of this Agreement. The performance of employees serving as Union representatives will be rated on the basis of Employer-assigned work consistent with the elements identified in the respective employee's performance plan. However, the time spent on Union duties will be considered by the supervisor during productivity considerations. That is, the employee union representative's performance of Employer-assigned work will be rated on the basis of pro-rated work time, i.e., the work performed in available work time after approved official time has been subtracted. Consistent with the terms of Article 30 (PMAP), an employee union representative must be under a performance evaluation plan a minimum of ninety (90) calendar days during a rating period to receive a rating.
- C. When the Union representative is initially appointed, the supervisor and the Union representative will meet to discuss workload and performance expectations. As determined necessary by the supervisor, the supervisor will make appropriate adjustments to workload relative to the representative's representational responsibilities and needs. When a representative believes that the work assigned cannot be timely performed due to the representatives representational duties, the representative may request, and explain why, the Employer should consider reassignment of work. The representative will provide a list of the work that the representative believes should be reassigned. If the Employer refuses to reassign work, and if the Union so requests, the Employer will provide its reasons in writing.

SECTION 4

- A. Union representatives must request official time and receive approval in advance consistent with workload requirements, except when unforeseeable circumstances caused by the actions of the Employer do not allow for advance approval. Official time requests will be granted unless they substantially hinder the accomplishment of essential workload requirements.

B. The Union representative will request authorization to use official time from his or her supervisor on an official time request form (see Amended Appendix 2). Where possible, this request will be submitted at least twenty-four (24) hours in advance. The Union representative will indicate the general nature of the representational activity he/she wishes to carry out, the location where the official time will be conducted, the name(s) of Employer representative(s) the union is meeting with for each activity (if applicable) and the approximate length of time he/she believes is required. Requests and their approval may be made on a day-to-day basis or for specific activities, as appropriate. For timekeeping purposes, all dates included in a single request for use of official time must fall within the same pay period. Representatives may submit multiple requests, however, within a single pay period. The Employer will promptly respond to official time requests, within two (2) workdays of receipt or prior to the scheduled usage, if shorter. When the Union representative needs to leave the work site and his or her supervisor is temporarily absent from the site, the representative will request release from another supervisor or manager in the chain of command prior to leaving the work site.

C. All advance requests for official time are understood to be estimates. If the estimate for official time is less than that actually needed, the Union representative must notify his/her supervisor prior to exceeding the estimate. Normally, such extensions, if reasonable, will be granted unless doing so would substantially hinder accomplishment of essential workload requirements. Approval may be oral (with subsequent written confirmation) or in writing. All Union representatives are subject to all leave administration and time keeping procedures affecting employees generally.

SECTION 5

A. During this Agreement, Chapter officers and stewards will be granted official time to conduct activities pursuant to 5 U.S.C. § 7131(a) and (c).

B. The Chapter Presidents for Chapters ~~229 and 282, 212, 254 and 282,~~ as well as ~~three two~~ other positions in Chapter 282 will be granted 80% 100% official time. ~~One other Chapter President designated by the Union will be granted 50% official time, i.e. 50% of the employee's work schedule, not counting holidays, leave taken, etc.~~

C. In accordance with 5 U.S.C. § 7131(d), all other Chapter officers and designated representatives shall be granted reasonable and necessary official time to perform the representational activities listed in Section 6.B 1-23. Requests and approvals of such time will be made pursuant to Section 4, above.

D. Chapter Presidents and Vice Presidents or Chief Stewards will not exceed, on an annual basis, official time in excess of fifty percent (50%) of their available duty time. The Agency may grant exceptions based on demonstrated need.

E. All other representatives will generally not exceed, on an annual basis, official time in excess of 33% of their available duty time. The Agency may grant exceptions based on

demonstrated need.

F. By mutual agreement, the parties may change these percentages.

G. When an employee resumes normal job duties after serving in a full-time union position, the Agency will determine and provide the training needed for successful performance of his/her position. Such employees will be given a reasonable period of time to re-acclimate themselves to their former duties.

H. Consistent with U.S.C. §7131(b), Union representatives and bargaining unit employees shall not perform any activity relating to internal Union business on official time, including the solicitation of membership, elections of labor organization officials, and collection of dues. These activities must only be performed while in a non-duty status.

SECTION 6

A. Time spent attending Agency established teams or workgroups, ~~such as PWS, MEO, labor management committees/councils, and other Agency established teams or workgroups~~ will not be counted toward the representative's annual percentage.

B. Pursuant to the procedures outlined in Sections 4 and 5 above, representatives shall be granted official time for participation in the meetings with the Employer and any other representational functions described below (including official time to travel to and from such meetings). ~~Internal Union business may not be conducted on official time.~~ Representational functions include any statutory proceeding or other forum in which the Union is representing an employee or the Union is acting pursuant to its obligations under relevant contract provisions, regulations or law, to include:

1. Formal discussions between Employer representatives and employees concerning personnel policies, practices, matters affecting working conditions or any other matter covered by 5 U.S.C. § 7114(a)(2)(A);
- ~~2. meetings to discuss or present unfair labor practice charges or unit clarification petitions; [5 USC § 7131(c)]~~
3. meetings to present appeals in connection with statutory or regulatory appeal procedures in which the Union is designated as the representative;
4. oral reply meetings if the Union is representing the employee;
5. any meeting for the purpose of presenting reconsideration replies in connection with the denial of within-grade increases;
6. meetings with the Employer for the purpose of presenting an employee's request

for review and/or reconsideration (grievance) of that employee's performance appraisal;

7. attendance at an examination of an employee who reasonably believes he or she may be the subject of a disciplinary or adverse action and the employee has requested representation pursuant to 5 USC 7114(a)(2)(B);
8. grievance meetings and arbitration hearings;
9. meetings of committees on which Union representatives are authorized membership pursuant to this Agreement;
10. EEO complaint settlements, administrative and/or court hearings if a complaint is processed under the negotiated grievance procedure;
11. ~~all preparations for~~ negotiations with the Employer occurring during the term of the CBA (including briefings);
12. attendance and participation at any new employee orientation session outlined in Article 13;
13. to attend OSHA meetings consistent with regulation;
14. to conduct training or activities on labor relations issues for employees not to exceed four hours quarterly (non-cumulative);
15. to conduct contract training for employees as outlined in Article 13;
16. to meet with members of Congress and their staffs on matters relating to bargaining unit conditions of employment;
17. attendance at Employer-recognized activities to which the Union has been invited;
18. to participate in jointly sponsored training primarily to further the interest of the government by improving labor-management relationships;
19. discussions of possible grievances with an employee;
20. conferring with affected employees about matters for which remedial relief is available under the terms of this Agreement;
21. informal consultations between the Employer and the Union;
22. preparation of reports, forms, and documents required by law or regulation

concerning the proper operation and administration of a labor organization; and

23. to prepare for, if necessary, and travel to any of the activities listed above

SECTION 7

Reasonable official time pursuant to 5 U.S.C. Section 7131(d) shall also be granted by the Employer for stewards to attend and participate in labor-relations training provided by the union or other professional agencies, (e.g., NTEU training and conventions, or training from the FLRA, FMCS, DOL, SFLRP, etc.) designed primarily to further the interest of Government by bettering the labor-management relationship, and where the agenda has been reviewed in advance by the Employer and the amount of time has been approved. will not be counted toward a representative's maximum official time "cap". The time authorized for this purpose shall not exceed 60 40 hours per representative each year, in the first year of the agreement and 48 hours per year thereafter. The employer shall not pay any costs, including travel or training costs, for training provided by other professional agencies.

SECTION 8

A. All employees (e.g., grievant, representatives, witnesses, and appellants) whose presence is necessary at relevant proceedings such as hearings, meetings, arbitrations, oral replies, etc., will be authorized official and/or duty time to participate in the proceedings. Such employees will also receive reimbursement and/or per diem for travel, except that reimbursement and/or per diem for travel for necessary Union witnesses shall be limited to up to two (2) Union witnesses, not counting the grievant, who are employees. In addition, the Agency will pay 50% of all reasonable travel and per diem expenses for additional necessary Union witnesses. The parties shall notify one another of the witnesses they plan to call, and representatives they wish to have participate no later than ten calendar days in advance of the scheduled proceeding.

B. Employees will receive official/duty time, as appropriate, when being interviewed by:

1. a steward who is using time pursuant to subsections 6B above; or
2. by a national representative of the Union, in connection with a matter for which remedial relief may be sought pursuant to this Agreement. Employees who are witnesses in arbitrations will receive official time as follows:
 - a. when being interviewed by national representatives of the Union in connection with an arbitration; and
 - b. when testifying during the arbitration
3. to prepare responses to actions proposed by the Employer

SECTION 9

Union representative working on credit hour programs may earn credit hours for representational activities in the following circumstances:

- A. They must have the approval of their supervisors, consistent with the credit hour provisions in Article 25, Alternative Work Schedules; and
- B. The time earning credit hours must be:
 - 1. to participate as a Union representative in Employer initiated meetings for which official time is otherwise appropriate; and/or
 - 2. the Union representative is working approved credit time, i.e. , duty status.
- C. The Union representative must record these credit hours as official time on the Form attached to this article as Appendix 2.

SECTION 10

A. The Employer will reimburse Union representatives who are employees of the Employer for all reasonable and necessary local travel expenses incurred in performing representational activities pursuant to this Article

B. Where not otherwise covered by this Agreement, the Employer will pay travel as follows:

- 1. the Employer will pay 50 % of all reasonable travel and per diem expenses for one employee representative per chapter in local bargaining where more than one district and/or chapter is involved.
- 2. in local bargaining involving only one chapter, the Employer will pay for 50% of all reasonable travel and per diem expenses The Parties will attempt to schedule any bargaining so that it coincides with other travel that may be reimbursed under this contract, e.g., cooperation committee meetings, etc.

For all other representation matters, the Employer will pay 50 % of all reasonable travel and per diem expenses for one employee representative per chapter.

~~C. The parties agree on the desirability of utilizing available technology to reduce travel costs for both the Agency and the Union, when it is practical and effective to do so. To that end:~~

~~1. Arbitration Hearings~~

- ~~a. Beginning October 1, 2014, each party may, during each fiscal year, designate a maximum of three grievance arbitration hearings to be conducted in whole or in part~~

~~by video conference.~~

~~b. In order for a grievance arbitration to be designated for video conferencing, the arbitrator, the grievant and the Union and Employer representatives must be physically present at the same site. There must be video conferencing equipment available at that site. Technical assistants need not be physically present at the hearing, but must be at a location where they can observe the hearing and be able to communicate in private (telephone, email, IM, etc.) with the appropriate representative. Witnesses need not be physically present at the hearing, but must be where they can testify by video or, if approved by the arbitrator, by telephone conference call.~~

~~c. Any of these requirements may be modified by mutual consent.~~

~~2. Grievance Step Meetings~~

~~a. Beginning October 1, 2014, each party may, during each fiscal year, designate a maximum of five grievance step meetings to be conducted in whole or in part by video conference.~~

~~b. In order for a grievance step meeting to be designated for video conference, the grievant and the Union representative must be physically present at the same site. There must be video conferencing equipment available at that site. The management representative, if not at that site, must be accessible by video. Other persons needed for the meeting need not be physically present, but may participate by video or telephone, as appropriate.~~

~~c. Any of these requirements may be modified by mutual consent.~~

ARTICLE 13

NEW EMPLOYEE ORIENTATION

SECTION 1

A. The Employer agrees to conduct a New Employee Orientation (NEO) of all new bargaining unit employees. The NEO will include a brief overview of the Agency, basic information on employee responsibilities and benefits, the HHS ethics rules, and standards of conduct applicable to employees.

B. Consistent with Article 7 (Union Rights) and 5 U.S.C. Section 7114, the Employer will notify all impacted local NTEU Chapter President(s) at least two (2) workdays in advance of any scheduled NEO. Such notice will include the following information for each bargaining unit employee:

1. the location, date and time of the NEO;
2. the name, grade, series and start date of the new bargaining unit employees;
3. the new bargaining unit employees' OpDiv, StaffDiv and official duty station;
and
4. the employees' Agency email and telephone number.

C. During each NEO session, the Union will be afforded an opportunity to make a presentation to the employees during the lunch break, or at another agreed upon time. If employees are permitted to participate in the orientation remotely, the remote access will remain on during the lunch period so remote participants can view and hear the Union's presentation.

D. The Union may distribute representational materials before the orientation, after the orientation, and during breaks in the orientation.

E. The NEO will also include document processing and other requirements for entering onto federal duty.

SECTION 2

The Employer will include a hardcopy of the parties' collective bargaining agreement in the Entrance on Duty (EOD) package given to each bargaining unit employee at orientation.

SECTION 3

If the Union is not present at the NEO, the Employer agrees, simultaneous with presenting an employee with an EOD package, to provide the employee a package of material provided by the Union. The package may contain:

- A. an introductory letter from the Union

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B. the NTEU Insurance Plan Brochures, if any

C. an SF-1187, Dues Withholding Form

D. a list of local Chapter representatives (including telephone numbers and location)

ARTICLE 15

ANNUAL LEAVE

SECTION 1

Employees will earn annual leave in accordance with applicable statutes and regulations. ~~Annual leave is paid time off (in a non-duty status) earned by an employee and subject to approval by management.~~

SECTION 2

A. Annual leave will be charged in increments of one-quarter hour and requested in increments of not less than one-quarter hour.

B. The use of annual leave is a right of the employee subject to the right of the supervisor to approve annual leave. Leave approving officials (LAO), e.g., the employee's supervisor or designee, may, consistent with operational demands, workload and with consideration of optimal staffing levels, determine when annual leave may be taken, refuse to grant annual leave, or revoke annual leave that has been granted, which may require recalling an employee to duty.

C. Requested leave will not be considered officially authorized until approved by the LAO.

D. The Employer shall not deny the use of annual leave as a disciplinary measure. Leave will not be denied for arbitrary or capricious reasons. If leave is denied, the Employer will provide reasons for the denial in writing to the employee, which may be by email.

E. Employees in travel status will earn and use annual leave in accordance with applicable law, rule, regulations, this Article, Article 42, and the Federal Travel Regulations (FTR).

F. It is the responsibility of the employee to request annual leave in advance. However, when an employee is unable to make the request in advance due to unforeseen circumstances, the use of leave may be approved.

H. Employees must report to work or have leave approved, every day, no later than the beginning of her/his fixed tour of duty or, for an employee working a flexible tour of duty, no later than her/his normal starting time or the start of core hours if s/he does not have a normal starting time. Supervisors may waive this requirement and approve annual leave after-the-fact for unexpected delays of an urgent nature which cause a later arrival. This provision does not alter the right to have other leave approved consistent with the terms of other leave articles in this contract.

I. When an employee has not received advance approval for leave but is not able to report to work for personal reasons, the employee must, by no later than his/her normal starting time or the start of core hours, whichever is earlier, speak directly to her/his leave-approving official (his/her superior or designee) or leave a voicemail and/or e-mail message, with a return number, for that official, requesting leave and giving the reason for not having secured advance approval. The leave-approving official will approve or deny the leave requested.

SECTION 3

A. Employees ~~are encouraged to~~ should submit requests for annual leave as far in advance as possible. Extended leave requests (any request for annual leave for periods of five (5) or more consecutive workdays and/or days off immediately preceding or following a holiday) should be submitted in advance. Employees will make requests using the HHS timekeeping system. If an employee is unable to access the HHS timekeeping system she/he should submit their leave request to the LAO by email or voicemail. Employees will not be required to make duplicate requests for annual leave.

B. Requests for annual leave will be approved or denied no later than ten (10) workdays after receipt of the request. During period of high leave use or operational needs, the Employer may require that extended leave requests be submitted by a specific date. If the LAO does not approve or deny the request within that timeframe, the request will be considered granted.

C. When an employee's request for extended annual leave conflicts with the request(s) of other employee(s) for the same date(s), the employees affected who are equally-qualified and capable of performing the needed work during that period will first try to resolve the conflict in requests informally. If resolution is not possible, the determination will be made by the supervisor, based on the dates on which the conflicting requests were submitted, seniority (based upon service computation date), prior leave approved for that period if close to a holiday and operational demands.

SECTION 4

A. An employee may be permitted to change scheduled leave that s/he had requested to another time. Such changes will be considered and approved in accordance with section 2 above.

B. Employees will be provided with the opportunity, where practical, to use any annual leave earned that will be in excess of the maximum allowable carry-over (so-called "use-or-lose") at some time during the course of the leave year so as to avoid losing annual leave. Each employee will monitor her/his annual leave account in order to make appropriate advance requests to the Employer for leave for vacation and other purposes which will contribute toward avoiding loss of annual leave.

C. Not later than September 15th of each year, the Employer will remind employees of a

need to request annual leave to avoid forfeiture of "use-or-lose" leave.

SECTION 5

Employees, upon request, may change previously-authorized annual leave to sick leave, where sick leave is appropriate.

SECTION 6

A. HHS may grant requests for advance annual leave to an employee in an amount not to exceed the amount the employee would accrue within the leave year. Employees may request advanced annual leave in accordance with this Article and applicable regulations. Any annual leave earned while an employee is indebted to the agency for annual leave will be used first to repay the debt.

B. Employees must repay any outstanding leave balance at the time of separation. No repayment is necessary if the separation is due to the employee's death or disability.

ARTICLE 16

SICK LEAVE

SECTION 1

- A. Employees earn and accrue sick leave in accordance with federal law and regulations. Employees may use sick leave in accordance with law and regulations in the following situations:
1. Incapacity for the performance of duties due to illness or injury;
 2. Emergency medical, dental, optical or surgical examination or treatment;
 3. Prescheduled medical, dental, optical or surgical examination or treatment;
 4. Incapacity for the performance or duties due to pregnancy or birth of a child;
 5. When presence at the worksite would, as determined by health authorities having jurisdiction or by a health care provider, jeopardize the health of others because of exposure to a communicable disease; and
 6. The employee must be absent from duty for purposes relating to the adoption of a child, including appointments with adoption agencies, court proceedings, required travel, and other activities necessary to allow the adoption to proceed.
- B. In accordance with the requirements and limitations set forth in 5 U.S.C. §6307 and 5 CFR Part 630, Subpart D, (Family Friendly Leave Act), employees may also use accrued sick leave:
1. To give care or otherwise attend to a family member having an illness, injury, or other condition which, if the employee had such condition, would justify the use of sick leave by that employee; and
 2. To make arrangements for or attend the funeral of such family member.
 3. For purposes of this section, "family member" is defined as the following relatives of the employee:
 - a. Spouse, domestic partners, and parents thereof;
 - b. Children, including adopted children and spouses thereof;

- c. Parents;
- d. Brothers and sisters, and spouses thereof; and
- e. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship, e.g., grandparents, grandchildren, godparents, godchildren or very close friend.

Employees may obtain information relating to the Family Friendly Leave Act on OPM's website at <http://www.opm.gov/oca/leave/index.asp>.

- C. For information regarding sick leave under the Family Medical Leave Act (FMLA), see Article 18 of this Agreement.

SECTION 2

- A. Where foreseeable, the employee should request sick leave as far in advance as possible. If the use of sick leave cannot be anticipated, all requests for approval shall go to the immediate supervisor or designee no later than two (2) hours after the start of the employee's tour of duty on the first day of the employee's absence. If the employee is unable to provide notice within the two (2) hour timeframe, the employee will notify the supervisor as soon as practicable.

Should the employee be unable to reach the immediate supervisor or designee, the employee must leave the immediate supervisor or designee a voicemail or email. The Employer may request contact information for employees on sick leave.

- B. The employee will inform her/his supervisor or designee of the anticipated duration of the absence. If the absence extends beyond the anticipated period, the employee will inform his or her supervisor of the situation as soon as practicable.
- C. Sick leave will be charged in quarter hour increments.

SECTION 3

Generally, an employee shall request advance approval for sick leave for the purposes of receiving non-emergency medical, dental or optical examination, operation or treatment. Such requests shall be normally approved within three (3) days of receiving the request, unless the employee's absence would create a workload problem. Examples of workload problems may include, but not limited to the following:

- 1) an inability to complete a specific or previously assigned work project in a timely manner; or
- 2) inadequate office coverage where physical presence is necessary.

SECTION 4

In this section, reference to sick leave includes any of the reasons listed in Section 1 of this Article regardless of the type of leave charged.

- A. An employee may be required to furnish a medical certificate (i.e., reasonably acceptable evidence to substantiate a request for approval of sick leave) if the sick leave exceeds three (3) consecutive workdays. In accordance with 5 C.F.R. § 630.201, 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. HHS will 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.
- B. Employees will not be required to furnish a doctor's certificate to substantiate a request for approval of sick leave for periods of three (3) consecutive workdays or fewer except as provided for in subsection 4C below.
- C. Leave Restriction
 - 1. Where the Employer has reasonable grounds to suspect abuse of sick leave based on a pattern of usage, the Employer may inquire further into the matter and ask the employee to explain. Absent a reasonable acceptable explanation, the employee will be orally counseled that continued frequent use of sick leave, or use in unusual patterns or circumstances, may result in a written requirement to furnish acceptable documentation for each subsequent absence due to illness or incapacitation for duty, regardless of duration.
 - 2. If the Employer continues to suspect abuse of sick leave based on a pattern of usage, the Employer may advise the employee in writing that acceptable medical documentation as defined by 5 CFR 339 may be required for each subsequent absence resulting from sick leave-related reasons.
 - 3. If reasonable grounds continue to exist to question an employee's use of sick leave, the Employer may issue a sick leave restriction letter to the employee. This sick leave restriction letter will explain the basis for the action. The leave usage of all employees under sick leave restriction will be reviewed no more than six (6) months after the effective date of the restriction. At that time, a written decision to either continue or lift the restriction will be provided to the employee. If the restriction is continued, another review will be conducted after no more than six (6) months has passed. If a meeting is held to discuss the results of the supervisor's decision, the employee shall have the right to have a Union representative at the meeting provided the employee reasonably believes the discussion may result in disciplinary action and the employee requests representation.

4. An employee on sick leave restriction must provide medical documentation in accordance with the terms of the restriction letter.
- D. Employees who, because of illness, are released from duty, and are not subject to the restrictions of subsection 4C above, will not be required to furnish a medical certificate to substantiate sick leave for the day released from duty. Subsequent days of absence will be subject to the provisions of subsections 4A, 4B, and 4C above.
- E. Employees who are not subject to the restrictions of subsection 4C above will not be required to furnish a doctor's certificate on a continuing basis if the employee suffers from a chronic condition that does not necessarily require medical treatment although absence from work may be necessary and the employee has previously furnished medical certification of the chronic condition. The Employer may periodically require further medical certification to substantiate an employee's continued use of this provision.

SECTION 5

Except for an emergency, an employee may not leave the work site to seek health unit services unless he or she has received the prior approval of the Employer. The employee who is returned to duty will not be charged with leave. Should the health unit recommend that the employee be sent home and/or to receive further medical treatment and the employee leaves the work site, sick leave will be charged beginning at the time the employee leaves the work site. Furthermore, no employee will be required to furnish a medical certificate to substantiate use of sick leave for that one day only provided that the employee is not subject to the restrictions of 4C above.

SECTION 6

- A. Absences qualifying for the use of sick leave may be charged to annual, earned credit hours, earned compensatory time or LWOP if so requested by the employee and approved by the supervisor.
- B. An employee who becomes ill while on annual leave may have the time of illness changed to sick leave provided that the employee notifies the supervisor on the first day of the illness and otherwise complies with the requirements of this article.

SECTION 7

~~Sick leave will be charged in quarter hour increments.~~ [Addressed in Sec. 2C]

SECTION 8

- A. Employees may request advanced sick leave if he or she has a serious health condition. Advanced sick leave will be approved or disapproved for periods of no more than thirty (30) days under the following circumstances:

1. A written request with acceptable medical documentation as defined in 5 CFR 339 has been properly submitted;
 2. There is a reasonable assurance that the employee will return to duty and is not contemplating a resignation or retirement; and
 3. The employee has enough in his/her retirement account to reimburse the Employer for the advance should he or she not return.
- B. Transferred annual leave may be substituted retroactively for any period of leave without pay or used to liquidate an indebtedness for any period of advanced leave that began on or after the date fixed by the Employer as the beginning of the medical emergency pursuant to the Volunteer Leave Transfer Program.

SECTION 9

- A. The Employer will treat and safeguard any employee medical information as confidential. The Employer may disclose such information subject to its Privacy Act obligations, for work related reasons on a need to know basis only.

Plain text reflects current contract language, bold text is HHS proposed language NTEU adopts, and underline reflects new language proposed by NTEU. Existing contract language that NTEU rejects or agreed to an HHS proposal to strike is in strike-through.

ARTICLE 22

OVERTIME, COMPENSATORY TIME, HOLIDAYS

SECTION 1

Employees who are required by the Employer to work overtime will be compensated in accordance with applicable law and regulation.

- A. For employees on flexible work schedules, overtime work consists of hours of work that are ~~officially ordered in advance and in excess of 8 hours in a day or 40 hours in a week~~ and are officially ordered in advance, but do not include hours that are worked voluntarily, including credit hours, or hours that an employee is "suffered or permitted" to work that are not officially ordered in advance.

B. For employees on regular schedules, overtime work consists of hours of work that are in excess of 8 hours in a day or 40 hours in a week and

1. for FLSA-exempt and non-exempt employees ~~will be compensated for overtime or holiday work, as appropriate to their status, in accordance with all applicable laws, rules, and regulations, at the time the work is performed and with this Agreement to the extent it is not inconsistent therewith~~ are officially ordered or approved; or
2. for FLSA non-exempt employees, are "suffered or permitted".

~~Union representatives will be given overtime compensation when formal meetings (Article 7, Section 1) and employee interviews (Article 5, Section 3) require the Union representative to work in excess of 8 hours in a day or 40 hours in a week. [NTEU 12-10-18: TA on striking this new language we proposed.]~~

SECTION 2

In order to ensure that employees completely understand their rights for overtime compensation, the Employer will, each time an employee undergoes a personnel action, notify the employee on the SF50 as to whether he or she is exempt or non-exempt for the purposes of the Fair Labor Standards Act.

SECTION 3

Consistent with the procedures set forth below, overtime will be distributed equitably and fairly among all employees determined by management to be qualified to perform the work

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necessary to be completed. When overtime work becomes available, the Agency will notify the local chapter.

The Employer will determine qualified employees considering the following:

- Knowledge, skills and ability of the bargaining unit employees (e.g., specific knowledge or experience needed to adequately perform the overtime work);
- The nature of the work to be performed on an overtime basis (e.g., whether the work is a standard project that could be shifted to different employees; whether a particular employee is heavily involved in the work to be done or has specific knowledge necessary for the work to be completed); and
- The cost-effectiveness and timeliness related to selecting bargaining unit employees for overtime work.

SECTION 3A

Subject to Paragraph C below, the Employer will staff overtime assignments as follows:

First, the Employer will solicit volunteers from a pool of appropriately qualified employees. If there are more qualified volunteers than work available, the employees will be asked to attempt to decide amongst themselves who gets the work.

SECTION 3B

If the employees cannot reach agreement, the work will be assigned on a rotational basis to the most senior qualified employee using federal service computation date. Employees who are selected under this Section for voluntary overtime assignments will not be included among the candidates in subsequent voluntary overtime situations until all qualified volunteers have had the same opportunity.

SECTION 3C

If the number of qualified volunteers is equal to the number of employees needed to accomplish the work, all volunteers will work the overtime.

SECTION 3D

If there are an insufficient number of qualified volunteers, the work will be assigned to the least senior qualified employee on a rotational basis, using federal service computation date.

SECTION 3E

An employee who is ordered to work overtime will be relieved of the assignment if s/he finds

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a qualified and willing replacement acceptable to, and approved in advance by, the supervisor. An employee who finds a replacement will be treated on the rotation as if s/he performed the overtime assignment.

SECTION 3F

Nothing in this Article precludes the Employer from seeking volunteers to work on compensatory time. The Employer will follow the procedures outlined in this Article for soliciting and selecting volunteers for compensatory time. However, the Employer may not require that an FLSA-covered (non-exempt) employee work compensatory time.

The Employer will, when circumstances permit, notify an employee at least three (3) days in advance of scheduling an overtime assignment.

SECTION 4

The Employer will maintain appropriate overtime records to show who worked overtime and when.

SECTION 5

Employees will be compensated for overtime work performed under Title V of the United States Code or the Fair Labor Standards Act (FLSA) as may be applicable. Employees shall be compensated for all regular overtime work, and in increments of no less than fifteen (15) minutes for irregular or occasional overtime increments of overtime work approved by the Employer and worked by the employee. Employees will be permitted to file FLSA claims in accordance with the time frames set forth in the FLSA.

SECTION 6A

~~Except when an employee earns credit hours as provided for in the Article 25, Alternative Work Schedules, and consistent with applicable laws and regulations, an employee will be granted compensatory time in lieu of payment for overtime work if requested, for irregularly or occasionally scheduled overtime work (as defined in Section 1 above), provided the employee has obtained the prior written or verbal approval from an authorized official.~~

[NTEU Agree to strike 6A.]

SECTION 6B

~~Employees not entitled to time and one half overtime under the law, e.g., FLSA exempt employees above grade 10 step 10, will normally receive compensatory time in lieu of overtime pay for occasional and irregular overtime worked except when management determines that the employee is unlikely to have the opportunity to use the compensatory time at the end of the twenty-sixty (26th) pay period of the year in which the leave is earned. [NTEU agrees to strike~~

6B.]

SECTION 6C

Employees who have earned approved compensatory time and who do not use it within twenty-sixth (26th) pay periods after the pay period during which it was earned, shall have that time converted at the appropriate pay in accordance with 5 CFR 551.531 and 5 C.F.R. 550.114(d), except where inconsistent with regulation (i.e., when the compensatory time was earned for travel).

SECTION 6D

Employees with compensatory time balances when they separate from the Service shall have those balances paid. ~~converted.~~

SECTION 6E

~~Employees who are exempt from the overtime provisions of the FLSA will receive compensatory time for hours worked over 80 in a biweekly period, when the extra hours are necessary to meet work demands.~~ [NTEU agrees to strike its proposal in 6E.]

SECTION 7A

When the Employer requires the services of employees on an established holiday, the Employer will seek to fill its needs through volunteers from the qualified group. When the Employer is unable to fill its needs through these qualified volunteers, it will assign the work to qualified employees on a rotational basis, beginning with the employee with inverse SCD.

SECTION 7B

An employee involuntarily assigned to work on a holiday may be relieved if s/he finds a qualified and willing replacement acceptable to, and approved in advance by, the supervisor.

SECTION 7C

To minimize the adverse repercussions of assigning employees to work on holidays, the employer will provide as much notice as possible to the affected employees.

SECTION 8A

~~Irregular or occasional overtime work performed by an employee on a day when work was not scheduled for him or her, or for which he or she is required to return to his or her place of employment, is deemed at least two (2) hours in duration for the purposes of premium pay, either in money or compensatory time off.~~ [NTEU agrees to strike 8A.]

SECTION 8B

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The Employer will not compel any employee to provide their home telephone number to an answering service or similar organization, as a condition of employment when on call back rotation. If the Employer requests that an employee provides their home telephone number for the purpose of a call back rotation procedure, the employee may request that the Employer provide them with a beeper in lieu of their home telephone number. The Employer will not penalize an employee for deciding not to provide his or her home phone number.

SECTION 9

~~Employees may request to work irregular or occasional overtime or compensatory time to complete assigned tasks. The Employer will respond to these requests within five workdays of the request, but not later than one workday before the requested overtime or compensatory time has been requested to begin. [NTEU Agree to strike Sec. 9.]~~

SECTION 10A

~~Compensatory time for travel will be authorized only for "hours of employment" as defined in 5 U.S.C. § 5542 and under standards established by applicable decisions of adjudicatory bodies.~~

SECTION 10B

For purposes of compensatory time for travel, the official duty station is defined as the forty-five (45) mile radius around the post-of-duty.

SECTION 10C

Employees requesting compensatory time off for travel must complete the required form in advance of the official travel with compensatory time for travel estimates. Any amendments to said request must be completed and submitted within fourteen (14) days of their return from travel, for supervisory approval.

SECTION 10D

An employee's request for compensatory time earned shall be reviewed and approved or denied by the authorizing supervisor. Authorized compensatory time will normally be credited within the first pay period following completion of the travel. The authorizing supervisor will notify the employee as to the approval or denial of the request. Upon request, the Employer will provide the employee with the reasons for denial in writing.

SECTION 10E

~~An employee's entitlement to receive Compensatory Time Off for Travel is limited to:~~

- ~~1) An employee in a travel status;~~

- ~~2) The time actually spent traveling between their official duty station and a temporary duty station, or between two temporary duty stations, and;~~

~~Any usual waiting time that precedes or interrupts such travel. It is understood that usual waiting time before scheduled departures will be 1 to 2 hours before the scheduled departure, depending on whether the flight is domestic or international, respectively. In addition, time spent at an intervening airport waiting for a connecting flight, generally not exceeding two hours, shall be creditable time in travel status. Employees may provide documentation or other evidence of a longer waiting time, which the supervisor will consider crediting. [NTEU agrees to strike 10E.]~~

SECTION 10F

When compensatory time is earned for travel, consistent with 5 C.F.R. § 550.1407(a)(1), an employee must use accrued compensatory time off by the end of the 26th pay period after the pay period during which it was credited. If an employee fails to use the compensatory time, he or she must forfeit such compensatory time off. Management will allow, to the extent practicable, employees to use earned time as requested. If this is not practicable, the employee may request alternative time(s), which will be granted, workload and mission permitting. If it is determined that an employee cannot use the accrued time when initially requested, the Employer will provide the employee with the reason(s) for disapproving the time. Upon request, the Employer will provide the employee with the reasons for denial in writing. The decision to disapprove use of accrued time may be grieved under the parties' negotiated grievance procedures.

ARTICLE 26

TELEWORK

SECTION 1

Telework is a program that permits employees to work at home or at other approved locations remote to the conventional office site. For purposes of this Agreement, the terms telework, teleworking, "Flexible Workplace Arrangements Program" or "FWAP", "flexiplace" and "telecommuting" are synonymous and include working at home or in satellite office sites or other approved alternative work sites.

SECTION 2

The Parties anticipate that this program will result in increased productivity, improvements in employee morale, job satisfaction, and reduced absenteeism. Participation in telework is not an entitlement nor is it an accommodation for dependent/family care. The Employer will identify barriers to implementing telework and take action to increase the opportunities for employees in suitable positions to participate in the program.

SECTION 3

Situations appropriate for telework depend on the specific nature and content of the job, rather than just the job series and title.

- A. Telework arrangements may be used when there is recurring opportunity to perform work at an alternate site. This type of arrangement is regular and recurring. For example, the work does not require face-to-face interaction and collaboration with customers or peers on a daily basis, it does not require specialized equipment, systems, or reference materials unavailable except at the conventional office, and the employee's work habits are such that once an assignment is given, it can be accomplished without further oversight or supervisory consultation.
- B. Telework arrangements may also be used on an occasional or episodic basis, for individual days or hours within a pay period, or for a special assignment or project on a short term basis (as determined by the Employer). For example, such work tasks may include: data analysis, reviewing grants/cases, writing decisions or reports; telephone intensive tasks such as obtaining or collecting information, following up on participants in a study or setting up a conference; and some computer oriented tasks such as programming, data entry and word processing. Typically, such tasks require uninterrupted concentration and result in measurable work outputs or products.

- C. Telework arrangements may be appropriate to accommodate an employee with a temporary or permanent illness or disability, if the job can be accomplished at an alternate site, and the employee is capable of performing the job at home or at a telecommuting center but cannot commute to and/or from work on a daily basis. Such requests should be handled in accordance with this Article and Article 38.

SECTION 4

- A. Telework arrangements must be consistent with maintaining adequate office coverage. Adequate office coverage varies from location to location and is not necessarily a specific percentage of employees. It is determined by the specific needs of a location.
- B. The Parties agree that specific individual participation in telework must be considered on a case by case basis. ~~The decision~~ Decisions to approve or deny telework will not be made in an arbitrary and capricious manner. The Employer will administer the telework program in a fair and equitable manner, and consistent with law, rule and regulation.
- C. Pursuant to the Telework Enhancement Act (Appendix 3.1) employees that have been officially disciplined for being absent without permission for more than 5 days in any calendar year or for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties may not participate in the telework program.
- D. Each employee must meet the following criteria to be considered eligible to participate in the telework program.
1. The employee's latest rating of record is "fully successful" or better, and there is no reasonable cause to believe this level of performance will drop;
 2. The employee is not on leave restriction;
 3. The employee is not on a performance improvement plan (PIP);
 4. The employee has not received any disciplinary or adverse action which has a nexus to the integrity of the telework program within the last six (6) months;
 5. The employee is able ~~has demonstrated the ability to initiate his/her own work, to~~ work independently, without direct supervisory oversight, and to recognize when supervisory or other assistance is needed on assigned work or a project;
 6. The employee has completed ~~has received~~ telework training or has been teleworking since December 10, 2010;
 7. For employee applying for telework for the first time in an OPDIV/STAFFDIV,

the employee has held her/his current position for at least three (3) months, unless otherwise agreed to by the supervisor; and

8. The employee's fully successful performance of the work does not require:
 - a) Daily and frequent use of specialized equipment or technology that is available only at the official duty station;
 - b) Daily and frequent face to face contacts with co-workers, managers and/or customers (except where such contact can be otherwise accommodated);
 - c) Daily and frequent access to confidential or sensitive data and/or information (not attainable from home) such as personnel and/or payroll records or proprietary information protected from unauthorized disclosure by the Privacy Act of 1974 and its implementing regulations;
- E. Teleworking employees must use HHS approved technologies and methods to access all HHS networks and systems. When employees have been provided with government furnished equipment for use at the alternate duty station, they will be required to use that equipment while teleworking. If there are insufficient funds, employees participating in the telework program and using their primary personal residence (or any other approved site not fully-equipped with these items) may be required to provide at their own cost all equipment, supplies, and/or services necessary for working at the alternate duty station. The Employer may provide underutilized computers, furniture, or equipment for use by employees.
- F. ~~The Employer intends to implement an electronic system to maintain telework data. The union will be provided notice and an opportunity to bargain changes to conditions of employment resulting from the new system to the extent required by law and Article 3 of this Agreement. Upon implementation of the electronic system, employees' requests to telework shall be submitted to their supervisor electronically. Employees shall continue to request telework by submitting a written telework agreement form (Appendix 3.2) to their immediate supervisor or designee, according to the established procedures of their offices until the electronic system is implemented. The Employer shall act on requests for telework within ten (10) workdays of receiving the request. If the request is disapproved or modified, the employee will be notified in writing stating the reasons for the disapproval. Approval of an employee's request to telework must come in the form of a written telework agreement (Appendix 3.2) between the employee and supervisor, regardless of whether telework is routine (i.e., regularly scheduled and recurring), or episodic. Employees currently teleworking at that the time of when this agreement becomes effective are not required to enter must enter into a new written telework agreement unless they seek to modify that updates the terms of their existing telework agreement. within thirty (30) calendar days.~~

SECTION 5

- A. In some circumstances, the need to maintain adequate staffing levels in the traditional office worksite for such purposes as telephone coverage that cannot be accommodated on telework or immediate face-to-face customer service may result in conflicts among telework participants regarding scheduling of days to be worked on a telework arrangement. If such conflicts occur, the supervisor(s) and the affected employees will attempt to resolve the conflict in a manner which is satisfactory to the supervisor(s) and affected employees. If such discussions do not result in a satisfactory resolution, the following tiebreaker formula will apply.
- B. The telework preferences of employee(s) that are already participating in the program shall take precedence over the preferences of new applicants. If the conflict is between employees who are already participating, or between two or more new applicants, the tiebreaker shall be by seniority (high seniority). Seniority shall be determined by employees' federal Service Computation Dates (SCDs).

SECTION 6

- A. 1. Participation in the telework program is voluntary. However, the Employer may require employees to work at an alternate site in case of emergency situations. For example, Consistent with 5 U.S.C. Section 6329(c) and implementing regulations, telework-ready employees (i.e., employees with a signed telework agreement) are required to work at their approved alternate duty station during emergencies (e.g., Federal offices are closed, Federal offices are on delayed arrival, the Agency is operating under a Continuity of Operations Plan, etc.). On a case-by-case basis, a telework-ready employee may request and the Employer may provide weather and safety leave excused absence for a part or all of the day during an emergency and/or inclement weather situations if the employee's telework site is negatively impacted by the emergency (e.g., disruption of electricity or internet access, loss of heat, etc.) or if the employee's duties are such that he or she cannot continue to work without contact with the regular worksite, or under other extenuating circumstances related to the emergency that impede the employees ability to perform telework. If weather and safety leave excused absence is not granted, telework-ready employees must be prepared to telework for the entire workday, or take unscheduled leave, or a combination of both for the entire workday. Employees may also request LWOP if an employee does not have available paid leave or other paid time off (e.g., credit hours, earned compensatory time off) to his or her credit and is impacted by the emergency.
2. Whenever it becomes necessary to close an office because of a weather or other safety-related condition, reasonable efforts will be made to inform all employees by private or public media, including email and other methods as appropriate and available. Such notice will be made as soon as practicable. A "weather or other safety-related condition" is one which is general rather than personal in scope and impact. It may be caused by developments such as terror alerts, heavy snow or severe icing conditions, floods, earthquakes, hurricanes or other natural disasters, air pollution, massive power failure, major fires or serious interruptions to public transportation caused by incidents such as

strikes of local transit employees or mass demonstrations that create safety-related conditions consistent with 5 CFR Part 630, Subpart P.

- B. Participants in the telework program shall be permitted as part of a telework arrangement to continue to work any AWS schedule they may already be working. Employees who work approved flexible work schedules and vary their start times are required to inform their supervisors, prior to commencement of their tours of duty, of their start and end times for those days they work at an alternate site pursuant to this article.
- C. The official duty station of an employee participating in the telework program is the conventional work site for purposes of travel reimbursement, etc.
- D. Employees on a regular and recurring telework arrangement are required to report to the official duty station according to the schedule determined by the Employer. In addition, the Employer reserves the right to require more frequent days at the conventional work site for situations deemed appropriate by the supervisor either planned or unplanned, due to special circumstances, including, but not limited to, office assignments, meetings, absence of other employees, emergency situations, or training classes. Any regular AWS off days shall not be counted against telework days. Employees may attend these unplanned meetings via telephone unless physical presence is required.
- E. The Employer will make reasonable efforts to provide alternative methods, such as teleconferencing, use of fax and e-mail, and/or other methods to avoid unplanned situations requiring the employee to report to the conventional work site. However, when situations occur that require the employee to return to the conventional office, travel to and from the office is normal commuting time and as such is not considered hours of duty.
- F. As a minimum level of accessibility, the employees in the program are expected to be as available to managers, co-workers and customers by telephone, E-mail, voice mail or other communications media during their scheduled daily tours of duty as when working at the official duty station.
- G. Overtime and credit hours worked must be approved in advance by an authorized official. For employees on flexible schedules, work that is ordered and approved in advance which is in excess of eight (8) hours per day, forty (40) hours per week, or eighty (80) hours per pay period, is considered overtime work. For employees on compressed schedules, work that is ordered and approved in advance which is in excess of the number of hours worked daily on the compressed schedule is considered overtime work. Compensatory time may be substituted for overtime pay in accordance with law, regulation, and Article 22, Overtime, Compensatory Time, and Holidays, of this Agreement. Nothing in this Article diminishes an employee's FLSA rights as provided for by law and regulation.
- H. Policies and practices for requesting and using leave remain unchanged, except as provided in the applicable articles of this Agreement.

- I. For purposes of timekeeping, participants will sign a certification each pay period indicating hours worked or any exceptions to the scheduled tours of duty specified in their telework agreements. Falsifying time reports is cause to terminate participation in the telework program and could be grounds for other adverse or disciplinary action.
- J. The Employer has the right to be provided with reasonable assurance that employees are working at alternate sites when scheduled.
- K. An employee may switch his/her scheduled telework day(s) with prior supervisory approval. If an employee's request is denied, the reason(s) for the denial shall be provided to the employee in writing if requested. Managers shall not unreasonably or arbitrarily deny an employee's request.

SECTION 7

- A. A telework arrangement may not be feasible where there is a prohibitive cost to duplicate the same level of confidentiality or security as exists in the employee's official duty station.
- B. Telework home sites must have adequate workspace, lighting, residential telephone service, power, smoke alarms and adequate security.
- C. The Employer has the right to inspect the home work site at any time to ensure its suitability. The Employer will provide not less than one (1) workday's notice in advance of the inspection and the Union shall have a right to be present.
- D. Employees must comply with all security measures and disclosure provisions, including password protection and data encryption so that the Privacy Act or other security standards are not compromised.
- E. Employees must protect all government records and data against unauthorized disclosure, access, mutilation, obliteration and destruction.
- F. Employees must ensure that government provided equipment and property is used only for authorized purposes. Reasonable care should be used in operating all equipment. The servicing and maintenance of government owned equipment is the responsibility of the Employer.

SECTION 8

- A. The Employer may terminate, temporarily terminate or modify an employee's participation in the program for cause, such as:
 - 1. Failure to continue to meet the criteria listed in Section 4 above;
 - 2. Failure to adhere to the provisions of the Agreement and/or of this Article;

3. Failure to accurately and truthfully report time worked;
4. Organizational exigencies that impact on the mission of the Employer, and require the employee to perform work at the official duty station;
5. For misconduct in connection with the employee's obligations under the flexible work place program; and

Upon temporarily suspending or modifying an employee's telework agreement/plan, the supervisor will notify the employee at least seven (7) days in advance of the change.

- C. If a telework agreement is cancelled or terminated, within the first sixty (60) days of the employee's return to the traditional workplace the Employer will make reasonable efforts to return the employee to the same or a comparable work situation that he/she had prior to beginning the telework arrangement. After sixty (60) days, the Employer will restore the employee to the same or comparable work situation of other similarly situated employees.

SECTION 9

- A. Employees participating in the telework program will not be excused from work because workers at the official duty station are dismissed or not required to work due to an emergency if the emergency does not impact the work being performed at the alternative work site. If an emergency occurs at the telework work site that impacts on the employee's ability to perform official duties, the employee will immediately notify the Employer. The Employer will direct the employee to another work site, grant excused absence, or allow the employee to request appropriate leave, e.g., annual leave or LWOP.
- B. The Employer will not be responsible for operating costs, home maintenance, or any other incidental costs (e.g., utilities) associated with the use of the telework work site. The employee does not relinquish any entitlement to reimbursement for appropriately authorized expenses incurred while conducting business for the Employer as provided for by law and regulations.
- C. The employee is covered under the Federal Employees Compensation Act if injured in the course of performing official duties at the alternative work site.
- D. The Employer will not be held liable for damages to the employee's personal or real property during the performance of official duties or while using Employer equipment in the alternative work site, except to the extent the Employer is held liable under the Federal Tort Claims Act claims or claims arising under the Military Personnel and Civilian Employees Claim Act.
- E. Telework arrangements (agreements) are between the employee and their current supervisor. When employees are detailed or permanently assigned to another organizational

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unit of the Employer and under another supervisor, the employee and supervisor will need to discuss the continuation and/or necessary modifications to the existing telework agreement.

SECTION 10

The Employer will provide the Union National NTEU with copies of any reports on telework usage provided to OPM, within thirty (30) calendar days of submission of the reports. If not provided in the report to OPM, the Employer will also provide the Union with the following information, broken down by OpDiv; (1) the number of employees eligible to participate in the telework program; and (2) the number of employees participating in the telework program (including name, location, series, grade, and the type of telework arrangement).

ARTICLE 27

AWARDS

SECTION 1 – GENERAL PROVISIONS

- A. All awards programs of the Employer shall be administered in a fair and equitable manner, and in accordance with applicable law, regulation, policy, and this Agreement. Awards will be based on merit.
- B. ~~The Union will be given timely advance notification, an invitation to attend and an opportunity to participate at any OPDIV/STAFFDIV wide, Region wide and other organizational level award ceremonies.~~
- C. The parties acknowledge that monetary awards are contingent upon the availability of funds.
- D. Awards and recognition should be given as close in time as possible to the achievement being recognized.
- E. All employees who meet eligibility requirements may receive awards, including QSIs.
- F. The Employer shall establish awards pools at the appropriate OPDIV levels of the organization.s (e.g., OPDIV, STAFFDIV, Regional Office, etc.); ~~for FDA Headquarters, pools will be established at the centers levels.~~ Once these awards pools are established, the Employer will notify the Union. By December 31 of each year, the Agency will notify NTEU of where the awards pools will be for the appropriate rating cycles.
- G. The awards unit pools will be based upon a percentage of bargaining unit salaries as of the end of the first pay period at the beginning of each the fiscal year. The percentage of salary for the bargaining unit awards pool will be the same percentage as used for the non-bargaining unit awards pool. The Employer will notify the Union as soon as funding levels for awards pools (both performance and incentive awards) have been determined, and will provide sufficient data to demonstrate the proper calculation and allocation of these awards pools.

SECTION 2 - PERFORMANCE AWARDS PROGRAM

- A. Performance awards will be based upon the employee's overall final rating of record.

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1. Employees whose summary rating is Achieved Outstanding Results will receive a performance award payment up to 5% of salary, including locality payment or special rate supplement (as of the last day of the rating period). The specific percentage of salary will be determined on an award pool basis.
 2. Employees whose performance is Achieved More than Expected Results may be eligible for a performance award, at the discretion of the Employer, up to 4% including locality payment or special rate supplement (as of the last day of the rating period). The specific percentage of salary will be determined on a pool-by-pool basis.
 3. Employees whose performance is Achieved Expected Results may be eligible for a performance award, at the discretion of the Employer, of up to 3.0%, including locality payment or special rate supplement (as of the last day of the rating period). The specific percentage of salary will be determined on a pool-by-pool basis.
- B. Employees may request to convert the cash award amount into time-off equivalent, not to exceed an aggregate calendar year total of 40 hours time off. Any remaining balance will be paid out in cash.
- C. Employees will not receive both a QSI and a cash award for the same performance.
- D. Employees who receive an Achieved Outstanding Results rating may be eligible for a QSI.

SECTION 3 - INCENTIVE AWARDS PROGRAMS

- A. The Incentive Awards program covers superior accomplishment awards for special acts or services, length of service recognitions, and a variety of non-cash honor awards for accomplishments that occur at any point during the fiscal year.
- B. Incentive awards (including Special Act, TOA, etc.) are appropriate to recognize contributions to the quality, efficiency or economy of government operations. Examples include, but are not limited to:
- non-recurring contribution either within or outside of job responsibilities;
 - scientific achievement;
 - act of heroism;
 - high quality contribution involving a difficult or important project or assignment;
 - special initiative and skill in completing an assignment or project before the deadline;

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- initiative and creativity in making improvements in a product, activity, program, service; or current practice;
 - ensuring the mission of the unit is accomplished during a difficult period by successfully completing additional work or a project assignment while maintaining the employee's own workload;
 - contribution to the well-being of the community (non-monetary);
 - performance that contributes to protecting and promoting the health of the American people;
 - influencing/guiding others toward achieving organizational goals;
 - advancement of team goals toward HHS mission; supporting team and individual team members; supporting organizational units; and
 - recognition of an employee or group's disclosure of fraud, waste or abuse resulting in tangible or intangible benefits to the government.
- C. Incentive Award committees will notify all employees, through Employee Bulletins or other appropriate forms, of incentive awards committee meetings at least fourteen (14) days in advance of the meeting. Such notification will contain a brief explanation of the incentive awards criteria and a description of the procedures for submitting nominations for incentive awards.
- D. The Employer agrees it will establish no quotas or predetermined distribution rates for the size and number of incentive awards.
- E. The following criteria apply to special act or service awards:
1. The individual or group contribution must have been a one-time occurrence. It may be a single action or series of actions, performed either within or outside normal responsibilities. The determining factor in distinguishing what constitutes a special act or service is the one-time nature of the contribution itself. An aspect of the job can be recurring, but a special act or service award may be appropriate for a one-time special effort in performing that aspect of the job that would not otherwise be appropriately recognized through a performance award.
 2. Normally, the period of performance for a special act or service award will not exceed 120 days.
- F. Peers and supervisors may nominate employees or groups for incentive awards; Employees may nominate themselves for incentive awards. Nominators must submit their nominations to the local committee with jurisdiction over the nominee's organization.

- G. Nominators may inform nominees that they have been nominated for an award. Nominators and/ or individuals participating in the approval decision may not release or publicize any information about unapproved nominations to anyone other than the nominee.
- H. Employees will be notified of the approval of any award, and may be issued a certificate.

SECTION 4 - TIME OFF AWARDS

- A. Determinations to grant a time off award in excess of one (1) workday, shall be reviewed and approved by an official who is at a higher level than the official who made the initial decision. If the time off award was at the recommendation of a joint awards committee, a determination to grant a time off award in excess of one (1) workday shall be reviewed and approved by the appropriate official, consistent with § B below. Approval will be based on reasonable and relevant criteria applied uniformly to all similarly situation employees.
- B. In accordance with applicable regulations:
 - 1. A time off award may not be converted to a cash payment.
 - a. Full-time employees may not be granted more than 80 hours of time off during a single leave year.
 - b. The maximum amount of time off during a single leave year for part-time employees or employees with an uncommon tour of duty is the average number of hours of work in the employee's biweekly scheduled tour of duty.
 - 2.
 - a. For full-time employees, time off awards are limited to a maximum of 40 hours for a single contribution.
 - b. The maximum time off award for a single contribution for part-time employees or employees with an uncommon tour of duty is one-half the maximum amount of time that could be granted under Section 4B1(b) above.

SECTION 5

- A. Labor Management Incentive Award Committees
 - 1. The Employer shall continue local labor-management incentive awards committees at FDA. For FDA Headquarters this means the committees will be established at the Centers and Offices levels. (or establish additional ones as necessary); however, at FDA Headquarters committees will be established at the

~~centers-level.~~ There will be an equal number of bargaining unit members and management representatives on each team. The local chapters will appoint the BU members of these Committees. The Committees shall continue to operate under existing procedures. Any committee may modify their procedures at any time.

2. ~~For FDA,~~ The award pool will be divided between performance awards and incentive/suggestion awards. In no event will there be less than 15% of the funds from the established awards pool reserved for incentive/suggestion awards. The Committees may recommend a higher percentage to be reserved. For all other OPDIVs, 100% of the awards funding will be allocated for performance awards.
3. ~~FDA~~ These Incentive Award Committees shall meet quarterly to make recommendations, unless the parties agree that a quarterly meeting is not necessary. Those bargaining unit employees on the committees will be released from duty, absent a workload disruption. Dates of Committee meetings will be scheduled in advance and notice will be provided to the appropriate Chapter President. If the Chapter President cannot appoint BU members in a timely manner, the award nominations will be referred to the deciding official without a committee recommendation. Meetings may be rescheduled if determined necessary by the deciding official.

B. Incentive Awards

1. Awards handled by the committees will be time off awards, suggestion awards, special act awards and informal recognition items.
2. With respect to incentive awards, the Committees will:
 - a. Make recommendations of the use or non-use of informal recognition items, type used, if appropriate, for this purpose;
 - b. Develop a process for submitting nominations for awards and recognition;
 - c. Develop a process for recommending which nominees receive awards and recognition (guidelines, criteria, forms, information, etc.);
 - d. Review nominations and recommend approval/disapproval of awards (with or without modification);
 - e. Recommend time off awards in lieu of cash if budget shortfall restricts use of monetary awards or any other legitimate, performance based reason;
3. The parties will develop a process that ensures that awards are granted as close in time as possible to the achievements being recognized and that all grantees receive

a fair share of the awards funds.

4. The Committees will reach recommendations by consensus. If no consensus is reached regarding an award nomination, the final decision will be made by the individual with the award approving authority.
5. The official with award approval authority will consider the Committee's recommendations and accept, modify or reject them. If the recommendations are rejected or modified, the approving official will provide the Committee with her/his written rationale in order to guide its future deliberations. The mere fact that the Deciding Official does not accept the committee's recommendation is not grievable unless it violates law, rule, regulation, or a matter covered in the CBA.
6. Employees may not receive more than one reward or recognition item for the same special act or service.
7. No Committee member may participate in the review and discussion of any nomination for which s/he is the nominator or nominee, or for which s/he has a familial or blood relationship or any other relationship that gives rise to a conflict of interest.
8. Strict confidentiality concerning nominations and deliberations must be maintained by all Committee members and any other individuals who are privy to information on the nomination forms. This provision notwithstanding, nominators may, consistent with above, inform nominees that they have been nominated for an award.
9. Existing Committees with the current practice of signing off on incentive awards shall continue to have the authority to do so under this agreement.

C. Performance Awards

1. Labor-management performance awards committees shall be established at the OPDIV appropriate levels of HHS the organizations (OPDIV, STAFFDIV, Office, etc.). Existing incentive awards committees may assume this function if the incentive awards committee determines it is in the best interests of the parties. Generally these committees are established at the awards pool level but may be established at a higher level (OPDIV/STAFFDIV). Nothing shall preclude the establishment of a higher level committee having overarching responsibility to oversee subordinate committees within an OPDIV/STAFFDIV. Each OPDIV/STAFFDIV shall have at least one (1) performance awards committee.

The Agency shall inform the NTEU National President of the appropriate level for the performance award committees for each OPDIV/STAFFDIV and their

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management representatives on each committee before December 31 of each year.

The NTEU National President shall inform the Agency of who the Union representatives will be for each committee by January 15 of each year.

Each committee shall meet prior to January 31 of each year to discuss procedures which will be used to make their recommendation to the Deciding Official.

2. These committees shall:
 - a. be comprised of equal numbers of bargaining unit members and management representatives. Committees at the awards pool level shall not exceed three (3) members from each, the Union and Management. Higher level committees shall not exceed five (5) members from each, the Union and Management.
 - b. receive the aggregate performance scores and the awards budget for each awards pool no later than February 15 of each year.
 - c. meet at reasonable times to ensure recommendation are made in a timely manner.
 - d. make recommendations to the Deciding Official no later than March 15 of each year.
3. With respect to performance awards, the Committees shall:
 - a. base their recommendation on the aggregate final ratings for those employees within the Committee's jurisdiction and funds availability.
 - b. recommend the percent payouts for each rating level on an annual basis for which an employee may be eligible an award, i.e., Achieved Outstanding Results, Achieved More than Expected Results and Achieved Expected Results.
 - c. limit their recommendation to a rating level or a numerical score. For example, depending upon the specific circumstances, a committee may recommend that all employees receiving an overall rating of record of Achieved Outstanding Results be awarded 5% of salary and Achieved More than Expected Results be awarded up to 4% and Achieved Expected Results be awarded up to 3.0%; OR may recommend that employees receive a gradation of amounts based on their actual composite rating, e.g. employees with 5.0 receive 5% of salary, 4.9 receive 4.9% of salary and so forth.
4. The Deciding Official shall:

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- a. consider the committee's recommendation and make his/her decision on award payout by March 31 of each year. If the recommendations are rejected or modified, the deciding official will provide the Committee with her/his written rationale in order to guide its future deliberations.
- b. make his/her decision on awards payout by March 31 regardless of whether a timely recommendation was made by the committee. Failure of a committee to meet and/or make a timely recommendation shall not affect the Deciding Official's responsibility to make a decision by this date.

Performance awards will be paid out as soon as practicable

5. The Committee's recommendation must award all Achieved Outstanding Results employees prior to awarding Achieved More than Expected Results and Achieved Expected Results employees.

SECTION 6

Centers for Disease Control and Prevention (CDC) and Indian Health Services/Engineering Services.

As an exception to the above process, for those CDC bargaining unit employees located at the National Center for Health Statistics, Hyattsville, Maryland, and for those IHS employees of the Engineering Service unit represented by NTEU, will continue to follow all existing policies and the recommendations set forth by those OPDIVs to include Performance Awards Committee. The NCHS Committees shall continue to operate under existing procedures and policies.

SECTION 7

- A. The Employer agrees to furnish to NTEU National an electronic data file, to the extent that it is available, containing each bargaining unit employee represented by NTEU: an employee's summary rating score, location, grade/series, any Race, Nationality, Origin, Gender, Age and Disability (RNOGAD) data, and any awards/QSIs. The Employer agrees to provide this data no later than August 31 of each calendar year.
- B. The Employer agrees to provide to the local Chapters with an an semi-annual listing of all employees who have received incentive awards, the kind of awards they received, and the amount of the award, no later than October 31 for awards issued in the prior fiscal year.
- C. The Employer agrees to provide the Union with other relevant and necessary data and information concerning awards, as requested.

Existing article language is in plain text, management language NTEU adopts is in **bold**, and NTEU proposed new language is underlined. Existing language NTEU agrees to strike is in strike-through.

ARTICLE 30

PERFORMANCE MANAGEMENT APPRAISAL PROGRAM

SECTION 1

- A. ~~The purpose of the Performance Management Appraisal Program (PMAP) is to improve employee and organizational performance. It encourages continuous communication between employees and supervisors, provides a mechanism to evaluate employee performance and identify strengths and weaknesses, and provides a mechanism to address deficient performance effectively through such activities as increased communication, coaching, training, and if necessary, through appropriate personnel actions. Feedback and ratings under the PMAP system will be provided in a fair, consistent, constructive and equitable manner. This Article is intended to be used in conjunction with the Department of Health and Human Services PMAP document (Appendix 4) issued August 19, 2013. To the extent that there is a conflict in this article or contract with the PMAP policy or other management issued performance documents, the parties' collective bargaining agreement governs.~~
- B. ~~The Employer and Union agree that the effectiveness of this program will be evaluated within six (6) months from the end of the performance period by a joint labor-management workgroup. There will be equal numbers of NTEU representatives and management officials.~~

The purpose of the Performance Management Appraisal Program (PMAP) is to improve employee and organizational performance. **It is the sole right and responsibility of management to rate employee performance and to determine the number of rating levels and [critical] performance elements and standards applicable to each employee's position. In the event the Employer changes the PMAP five (5) level rating system, NTEU has a right to bargain over such changes consistent with law.**

Feedback and ratings under the PMAP system will be provided in a fair, consistent, constructive and equitable manner.

SECTION 2

~~The objectives of the PMAP are to:~~

- ~~• Improve employee and organizational performance by defining critical aspects of employee performance and assessing results achieved;~~
- ~~• Communication and clarify organizational goals and objectives to employees;~~
- ~~• Facilitate evaluation of employee performance;~~
- ~~• Encourage communication between supervisors and employees;~~
- ~~• Identify good employee performance for recognition; Address deficient performance effectively through such things as increased communication, coaching, training and if necessary, through appropriate personnel actions; and~~
- Provide uniform and consistent evaluation of performance for all covered employees.

The Employer will review the Performance Appraisal form template annually. The Employer will provide a copy of that document to the Union whenever changes are made, subject to NTEU's right to bargain over any such changes consistent with law.

SECTION 3

The PMAP program and forms covers all NTEU bargaining unit employees covered by this Collective Bargaining Agreement.

SECTION 4

All bargaining unit employees will receive a performance appraisal that will be based on a comparison of the employee's performance with the standards and elements established for the appraisal period. Terms used in this Article are defined as follows:

- A. Appraisal (Rating) means the process under which performance is reviewed and evaluated.
- B. Appraisal period means the established period of time for which performance will be reviewed and a rating of record will be prepared. The appraisal period normally covers the Calendar Year (January 1 through December 31). An employee must be under a performance evaluation plan a minimum of sixty (60) calendar days during a rating period to receive a rating.
- C. Critical Element means work assignments or responsibilities of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. Such elements are used to measure performance only at the individual level.
- D. Performance means an employee's accomplishment of assigned work or responsibilities.

- E. Performance Plan means all written, or otherwise recorded, performance elements that set forth expected performance. A performance plan must include all critical and non-critical elements as determined by the Employer and their performance standards (measures).
- F. Performance standard means a statement of the performance threshold, requirement, or expectation that must be met to be appraised at a particular level of performance. A Performance Standard (Measure) may include, but is not limited to, quality, quantity, timeliness and manner of performance.
- G. Progress review means communicating with the employee about his/her performance to date compared to the performance standards for each element. Progress reviews are important for providing consistent performance feedback to employees and can be conducted at any time during the appraisal period. One formal progress review is required and is generally conducted midway through the appraisal period
- H. Rating Official means the official responsible for informing the employee of the critical elements of his/her position, establishing performance requirements, providing feedback, appraising performance, and assigning the summary rating. The rating official is normally the employee's immediate supervisor.
- I. Rating of Record (Final Rating) means the performance rating prepared at the end of an appraisal period for performance of Agency-assigned duties over the entire period and the assignment of a summary level within a pattern. A final rating summarizes and measures an employee's performance on each element for which there has been an opportunity to perform for the minimum rating period. In most cases a summary rating (see definition below) will become the rating of record.
- J. Summary rating means combining the written appraisal of each critical element (on which there has been an opportunity to perform for the minimum period, i.e., 90 60 calendar days) to assign a summary rating level. The rating official derives the summary rating from appraising the employee's performance during the appraisal period on each element.

SECTION 5

- A. When the Agency creates a new performance plan for covered employees, without waiving any bargaining rights, the Union will be provided notice and may make recommendations and present supporting evidence pertaining thereto documents. The Employer will consider the Union's recommendations and advise the Union, in writing, of the results of its review no later than three (3) workdays prior to implementation.
- B. 1. The supervisor and employee should discuss goals and work expectations for the rating period. Discussions may cover the employee's official duties and responsibilities; organizational goals and objectives; the type of performance necessary to achieve each rating level; and, the employee's goal for the future. Additionally, these discussions will include an identification of cascading goals for which the employee is also responsible. The Agency agrees that it is important for supervisors to communicate with employees to

set relevant, achievable goals that support the organization's mission. Each employee should actively participate in developing his/her performance plan for the appraisal period. Supervisors shall clearly communicate expectations and metrics. ~~The following is a list of actions that supervisors shall follow:~~

- ~~Communicate to employees their strengths and encourage the development of necessary skills to overcome weaknesses;~~
- ~~Active partnering in performance management to reinforce positive manager-employee relationship;~~
- ~~Provide equitable performance expectations;~~
- ~~Submit constructive feedback and improvement strategies;~~
- ~~Discuss and identify, where appropriate, supervisor support of employees development and professional growth;~~
- ~~Development of objective performance measures that reflect job requirements;~~
- ~~Provide an atmosphere that allows for two-way communication;~~
- ~~Provide and encourage constructive feedback;~~
- ~~When applicable, discuss individual goals or Individual Development Plan.~~

~~2. In developing performance plans for a given position, the Employer agrees to consider the views of the employees who occupy the position. Consistent with Section 5C below, prior to implementing a new or revised performance plan, the Employer will provide employees whose performance will be assessed under it with a draft of the new or revised plan, identifying all new or revised portions of that plan and informing the employees that they should read the new or revised plan and submit any comments they wish to make to their supervisors. The supervisor will consider the views of the employee, when such views are presented, before implementing the performance plan.~~

[NTEU 12-12-18: Agree to strike 5B2.]

C. The performance plan is provided to the employee within thirty (30) days after the beginning of the rating period. Employees will be given five (5) workdays to submit written or oral comments on any proposed performance plan applicable to them. Reasonable requests for extensions will normally be granted. Before comments are due, an employee may request to meet on duty time with a Union representative to discuss the proposed changes in his/her performance plan. The Employer agrees to consider the written comment(s) of an employee before finalizing a new or revised performance plan. If the employee declines to sign, the effective date of the plan is the date the rating official attempted to obtain the employee's signature. The supervisor will note this on the plan, citing the date the employee was given a copy of the established plan.

~~D. The employee's signature means that the supervisor has communicated the performance plan to the employee. It does not mean that the employee agrees with the plan.~~

~~E. The supervisor is responsible for providing information about the performance plan and~~

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~~his/her expectations to help the employee understand the requirements of the plan. The employee is responsible for ensuring that he/she has a clear understanding of the supervisor's expectations and the standards against which performance will be measured. The employee should request clarification from the supervisor when needed.~~

[NTEU 12-12-18: Agree to strike 5D and 5E.]

F. An employee will not be evaluated on any aspect of his/her performance plan until the employee receives the new performance plan that incorporates these changes.

G. Ratings will be based on the application of established performance standards to the employee's observable or measurable performance.

H. ~~The Employer will consider extenuating circumstances outside the control of the employee, when applying performance standards against employee performance.~~ [NTEU 12-12-18: Agree to strike 5H.]

I. The Employer will consider such factors as availability of resources, lack of training, or frequent authorized interruptions of normal work duties.

J. The Employer shall not establish any quota system for appraisals.

K. ~~Annual ratings/annual ratings of record when used will reflect the employee's performance for the full annual appraisal period unless the information necessary to make such an appraisal is not available. Ratings for periods of time which are less than the full annual appraisal period will be so noted.~~

L. ~~An employee's signature on a performance appraisal indicates only that the performance appraisal has been received, not an employee's agreement with the performance appraisal.~~

[NTEU 12-12-18: Agree to strike 5K & 5L.]

M. Authorized time spent performing collateral duties and/or Union representational functions will not be considered as a negative factor when evaluating any critical job elements. For example, if a Union representative has spent 30% of a work period on official time, annual leave, LWOP or performing Union duties, this fact will be considered in the application of expected performance standards.

N. ~~When evaluating performance, it is important to communicate to employees all changes in working procedures before they can be charged with errors or held accountable.~~

O. ~~The fact that an employee assumes new tasks, receives new critical job elements, changes positions, is a trainee, and/or gets promoted to a new position does not create a presumption that his or her performance is only "Achieved Expected Results".~~

[NTEU 12-12-18: Agree to strike 5N and 5O.]

SECTION 6

A. Elements

1. ~~A performance evaluation plan shall contain two (2), and generally no more than six (6) elements. The Employer has determined that all elements are critical and define what is important in the job.~~
2. ~~If team elements are used, employees shall be rated for their individual contributions to the success of the team.~~
3. ~~If deletions are made for any reason to an individual employee's critical job elements, performance standards, or the elements or areas that comprise the critical job elements, the affected employee(s) will be promptly notified.~~
4. If the Employer changes any of the aspects (for example, any addition, removal or alteration of a performance aspect or measure) of a CJE requirement, it will serve notice on NTEU of such a change and bargain to the extent required by law.

B. Performance Standards

1. Performance standards define what is successful performance on the element. ~~The PMAP performance plan identifies performance measures at each of the 5 ratings levels. (See example PMAP performance plan attached as Appendix 5 of this agreement).~~
2. To the extent possible standards should be:
 - Objective. Free from personal feelings or opinions that might bias the rating of actual performance;
 - Explicit. Clearly written and free from ambiguities;
 - Observable or measurable. Specify discernable conditions, characteristics, and allow for differentiating between levels of performance; and
 - Attainable. Goals or results/outcomes must be achievable and realistic for each level of performance. Measures shall be neither too easy nor too difficult but instead state what is normally expected in order for the job element to be successfully met. All objectives must be attainable by the end of the rating period. If numeric information on performance will not be available by the end of the rating period, it must be clear how success will be measured.

SECTION 7

A. Progress Reviews

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

2. The process of monitoring performance is ongoing. However, when the supervisor notices performance at lower than a Achieved Expected Results level, the Employer will counsel employees in relation to their overall performance rating on an as needed basis. Such counseling will normally take place when a supervisor notices a decrease in performance and include advice or recommendations on better communicating job requirements, identifying and providing supplemental training, and providing additional coaching, monitoring, mentoring, and other developmental activities, as appropriate, to help improve employee performance until the employee shows improvement.

3. ~~The supervisor of the employee may initiate discussions to provide feedback concerning performance. Each discussion should be candid and forthright and aimed at identifying performance strengths and weakness; barriers to success; methods for improving performance; training needed; etc.~~

[NTEU 12-12-18: Agree to strike 7A3.]

4. The rating official shall conduct at least one (1) documented progress review discussion in person between the establishment of the performance and the end of the rating period (generally mid-year), during which the supervisor shall discuss the employees performance including in critical elements. ~~During any progress review, the rating official and employee may discuss the:~~

- ~~— Employee's accomplishments;~~
- ~~— Performance standards remaining to be accomplished and any barriers that may impede their accomplishment;~~
- ~~— Revisions to the plan which may reflect changes in work assignments or program initiatives, deficiencies in performance and required improvements; and~~

- ~~Training and developmental needs.~~

~~5. During the mid-year progress review discussion, the supervisor may identify aspects or factors within each element or performance measures that the employee should focus improvements efforts on during the remaining time in the rating period. These aspects may be marked on the form for emphasis or identification purposes.~~

[NTEU 12-12-18: Agree to strike 7A5.]

6. A written narrative is not required in connection with the progress review unless performance is less than Achieved Expected Results. However, where performance has declined, the supervisor will provide written feedback when requested. If a written narrative is prepared, a copy will be furnished to the employee. The supervisor and the employee will sign and retain a copy of the progress review documentation. ~~If the employee declines to sign and date the form, the supervisor shall note that the employee declined to sign, citing the date the employee was given a copy.~~

B Modifying Performance Plans

1. Performance elements and measures may be changed as necessary during the rating period. Changes to the original performance plan shall be initialed and dated by the rating official and the employee, and a copy provided to the employee.
2. If a plan is revised to include new performance elements and/or measures, changes shall become effective at the time they are given to the employee. An employee may not be rated on a new element or performance standard or any major revisions to an existing element or performance standard that has been in effect less than ~~ninety (90)~~sixty (60) days.

SECTION 8

A. Element Ratings

1. If a plan is revised to include new performance elements and/or measures, changes shall become effective at the time they are given to the employee. An employee may not be rated on a new element or performance standard or any major revisions to an existing element or performance standard that has been in effect less than ~~ninety (90)~~sixty (60) days.
2. Consistent with current HHS policy, there are five (5) levels for rating performance on each element:

Level 5: Achieved Outstanding Results (AO): 5 points

Level 4: Achieved More than Expected Results (AM): 4 points

Level 3: Achieved Expected Results (AE): 3 points

Level 2: Partially Achieved Expected Results: 2 points

Level 1: Achieved Unsatisfactory Results (UR): 1 point

NR (Not Rate-able): performance of the duties/responsibilities reflected by the critical job elements and standards has not been observed

- B. 1. ~~The Employer has determined that the following method shall be used to translate the composite element rating into a final rating:~~

~~Level 5: Achieved Outstanding Results (AO): 4.5 – 5 points~~

~~Level 4: Achieved More than Expected Results (AM): 3.6 – 4.49 points~~

~~Level 3: Achieved Expected Results (AE): 3.0 – 3.59~~

~~Level 2: Partially Achieved Expected Results (PA): 2.0 – 2.9 points~~

~~Level 1: Achieved Unsatisfactory Results (UR): 1 to 1.9 points~~

The Employer will identify the method it will use to translate the composite element rating into a final rating at the beginning of the rating period when it provides the performance plan to the employee.

2. Final ratings shall be derived after rating and assigning a score to each critical element. The rating official will explain the basis for score assigned to each critical element. The rating official will total the points and divide by the number of critical elements, to arrive at an average score (up to two decimal places). This score will be converted to a summary rating. ~~Employer-determined exceptions to the mathematical formula are outlined in the PMAP document.~~
3. When the employee's final rating is below "Achieved Expected Results", the rating official shall prepare a written explanation describing the specific areas in which the employee failed. Upon request, when an employee's final rating has declined, the supervisor will prepare a written explanation describing the specific areas in which the employee's performance has declined.
4. ~~The Employer has determined that the system does not require a second level review of the rating. However, at the discretion of the OPDIV Head, the rating official may submit the employee's evaluation to a reviewing official for concurrence prior to providing the rating to the employee. Any changes to the evaluation or rating by the reviewing official will be provided in writing.~~

[NTEU 12-12-18: Agree to strike 8B4.]

5. However, when an employee's supervisor has determined that a rating of Achieved Unsatisfactory Results may be issued to an employee, the supervisor shall first discuss the proposed rating with the employee. The employee will be given an opportunity to respond to the rating in writing. The supervisor shall provide the appraisal, the

appropriate documentation and any written response prepared by the employee for a second level review. If the second level review establishes that a rating of Achieved Unsatisfactory Results is appropriate, the final rating of Achieved Unsatisfactory Results will be prepared. A second level review is required for all Achieved Unsatisfactory Results ratings.

6. The final rating shall be discussed with the employee. The final rating shall be in writing, or otherwise recorded, and given to the employee as soon as possible after the end of the rating (normally within thirty (30) days).
7. Employees who wish to comment on their final rating may record their comments on the appraisal form or as an attachment to it. Such comments will be attached to and become part of the appraisal.
8. Employees will be provided with a reasonable amount of administrative time, not to exceed four (4) hours, to prepare written comments concerning any performance appraisal that becomes the employee's annual rating of record. Such comments will be attached to and become part of the appraisal. Failure to rebut does not indicate employee agreement with the appraisal. Similarly, failure by the supervisor to comment on the employee's rebuttal does not indicate agreement with the employee's comments. It is not necessary or appropriate for a supervisor to prepare additional remarks regarding the employee's comments in that the appraisal constitutes management's stated position.
9. ~~An employee, who disagrees with his/her numerical score and wishes to file a grievance, may do so in accordance the negotiated grievance procedure in Article 45, Grievance Procedure.~~
[NTEU 12-12-18: Agree to strike 8B9, without waiving the right to grieve.]
10. If an employee who receives an Achieved Unsatisfactory Results rating subsequently successfully completes a Performance Improvement Plan (PIP), the employee will be provided a written statement of the successful completion of the PIP and the level of performance reached.

SECTION 9

- A. Employee Not Under a Plan for at Least ~~90~~60 days. An employee is considered to be ratable if he/ she has performed under a plan for at least ~~ninety (90)~~sixty (60) days during the rating period. If a final rating cannot be prepared at the end of the annual rating period because the employee has not been under a plan for at least ~~ninety (90)~~sixty (60) days, the rating period shall be extended until the ~~ninety (90)~~sixty (60) day period is reached. A final rating shall be prepared as soon as possible after ~~ninety (90)~~ sixty (60) days is reached, normally within thirty (30) days.
- B. Permanent Position Changes. If an employee permanently changes positions during the

rating period, and has performed under a plan for at least ~~ninety (90)~~sixty (60) days in the previous position, the employee's rating official must prepare a rating appraising the employee's performance to date in the previous position. This rating will be provided to the new rating official who will take the rating into consideration in deriving the final rating for the annual rating period.

- C. Details/Temporary Promotions. When an employee is temporarily detailed or receives a temporary promotion to a position with the Employer for ~~ninety (90)~~sixty (60) days or more, the gaining supervisor shall prepare a performance plan describing the critical elements of the temporary job and prepare a rating of the employee's performance during the temporary work assignment. This rating will be provided to the supervisor of record upon the employee's return to the original position, and will be considered by the rating official when developing the employee's final rating for the annual rating period.
- D. Temporary Assignments Outside the Agency. The rating official will make a reasonable attempt to obtain a performance assessment for any temporary work assignment by an employee performed outside the Agency. At a minimum, the rating official will contact the temporary duty supervisor and request a memorandum describing the assignments performed by the employee and an assessment of how well the employee performed the assignments. If definitive information is obtained, the rating official will consider it in developing the final rating for the annual rating period.
- E. Supervisory Changes. Whenever a supervisor leaves his/her position, he/she shall provide a written assessment about his/her employee's performance, up to the time of the change, so that the gaining supervisor will have information to consider when preparing a final rating at the end of the annual rating period, and so that the employee will be properly credited for work accomplished during the entire rating period.

[NTEU 12-12-18: Reassert status quo/rollover on 9A-9E, except for changing 90 days to 60 days.]

SECTION 10

~~When an employee moves to a different organization within the Employer or to a Federal agency outside the Employer at any time during the Employer's rating period, the most recent performance ratings of record must be transferred as required in 5 CFR Part 293, including the rating that must be prepared at the time of the position change if the performance plan was in effect for at least ninety Days.~~

SECTION 11

~~After a rating of record is issued, any form which identifies job elements, the performance standards for those elements, along with any changes, including appraisal information on those elements, shall be retained for four (4) years in the Employee Performance File (EPF) system established for employees covered by this program.~~

SECTION 12

- A.** During the final thirty (30) days of an employee's annual appraisal period (or as otherwise agreed upon), the employee may prepare a written self-assessment.
- B.** An employee who prepares such assessment shall be granted a reasonable amount of administrative time, not to exceed four (4) hours to do so, and shall submit that self-assessment to his or her immediate supervisor by no later than the last workday of his or her annual appraisal cycle.

SECTION 13

The annual performance appraisal provides invaluable information to supervisors regarding an employee's need for additional training or coaching, and provides the employee with realistic feedback on how well he or she has performed during the rating cycle, as compared to the critical job elements for his or her position. Because of the importance of the annual appraisal, any disagreement between the supervisor and the employee over its content should be resolved in an expedited manner that encourages open and constructive dialogue regarding the supervisor's performance expectations, the employee's performance, and the appraisal itself.

SECTION 14

The Employer agrees to furnish NTEU National an electronic data file, to the extent that it is available, containing bargaining unit employees represented by NTEU subject to the new PMAP: an employee's summary rating score (when available), location, grade/series, any RNOGAD data, and any awards/QSIs. The information will be provided no later than August 31 each year.

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SECTION 15

~~The Union and the Agency may jointly develop a training program through a joint labor management team to train employees on Articles 30 and 27. The team shall have an equal number of labor/ management individuals.~~

[NTEU 12-12-18: Agree to strike Sections 10, 11, 12A, 12B, 13, 14 and 15.]

ARTICLE 31

ACTIONS BASED ON UNACCEPTABLE PERFORMANCE

SECTION 1

This Article applies to all members of the bargaining unit who have completed a probationary or trial period. No employee will have an action, under 5 CFR 432, proposed against him or her that relies on a performance plan under which he or she has not been working for at least the minimum rating period or where performance expectations have not been communicated to the employee consistent with the requirements of law and the terms of this Agreement.

SECTION 2

Consistent with 5 C.F.R. §432.103(h), unacceptable performance is defined as performance by an employee that fails to meet one or more critical job elements of his/her performance plan.
~~Unacceptable performance is synonymous with unsatisfactory performance.~~

SECTION 3

To the maximum extent feasible, the Employer will act in a fair and objective manner, giving particular attention to avoiding disparate treatment of employees, when taking actions based on unacceptable performance.

SECTION 4

When an employee requests a change to a lower-graded position due to his or her inability to perform the duties of the current position, the Employer will consider placing the employee in a lower-graded position identified by the Employer which the Employer believes the employee can successfully perform provided there is such a vacancy and the vacancy is available to be filled.

SECTION 5

- A. No bargaining unit employee will be the subject of an action based on unacceptable performance unless that employee's performance fails to meet established performance standards in one or more critical job elements of the employee's position, after having been afforded an adequate opportunity to demonstrate acceptable performance.

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1. If at any time during the performance appraisal cycle that an employee's performance is determined to be unacceptable in one or more critical job elements, the Employer will:
 - (a) notify the employee of the critical job elements(s) for which performance is unacceptable; and
 - (b) issue a written plan to the employee, including but not limited to suggestions as to how the employee can improve his/her performance, the type of assistance the Employer will provide, and instructions on ways the employee can be expected to raise his/her performance to an acceptable level.
 2. To avoid a reduction in grade or removal, the employee must meet and sustain at an acceptable level, the performance standard(s) for which the critical job element(s) at issue.
- B. The Employer will provide more extensive assistance and feedback to an employee undergoing a PIP in an effort to secure the attainment of the requisite level of improved performance during the time period designated for the reasonable opportunity to improve. As necessary, the Employer will provide counseling at regular and reasonable intervals and times, written and/or oral feedback, and other reasonable efforts to assist the employee to bring performance up to an acceptable level prior to initiating any removal or demotion action under this Article.

SECTION 6

- A. Prior to issuing a notice of proposed action based on unacceptable performance, the Employer will issue a letter to the employee which contains the following:
1. an identification of the critical job elements and performance standards for which performance is unacceptable;
 2. provide specific examples of how the employee's performance does not meet the requisite standards;
 3. specify ways in which the employee must improve performance to meet the requisite standards;
 4. a statement that the employee has a reasonable period of time (specified in calendar days) but not fewer than sixty (60) days, unless the employee demonstrates acceptable performance prior to sixty (60) days, and not more than ninety (90) days in which to bring performance up to an acceptable level;
 5. a description of what the Employer will do to assist the employee to improve the unacceptable performance during the opportunity period; and

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6. inform the employee that failure to improve performance to a level above unacceptable and sustain it at that level in the time period specified may result in the employee being reduced in grade or removed.
- B. A grievance may not be filed on either the substance or procedural aspects of this notice until a final decision is issued.

SECTION 7

- A. An employee whose reduction in grade or removal is proposed under this Article is entitled to at least thirty (30) calendar days' advance written notice of the proposed action. The written notice will contain the following:
1. The action being proposed;
 2. The critical elements of the employee's position on which the performance is considered unacceptable;
 3. The specific instances of unacceptable performance on which the present action is based;
 4. The employee's right to be represented;
 5. Information stating that the employee is entitled to respond, orally and/or in writing, within fifteen (15) work calendar days;
 6. The name of the individual to whom the response shall be made; and
 7. Information stating that a decision as to the retention, reduction in grade or removal will be made no sooner than thirty (30) calendar days after the receipt of the notice and no later than thirty (30) calendar days from the expiration of the notice period.
- B. The Employer will not make a decision until after the oral or written reply is heard/submitted and considered, unless such restriction would violate the Employer's statutory obligation to make a decision within thirty (30) calendar days after expiration of the notice period.

SECTION 8

- A. An employee must inform the deciding official, in writing, if s/he is represented by the Union. The Union will notify the deciding official of the representative's name once the Union determines whom the representative will be.
- B. The Employer will provide a written summary of the employee's oral reply. The Employer may elect to hire a transcription service to provide a verbatim transcript of the oral reply. A

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copy of the summary or transcript will be included in the material relied upon, and it will also be provided to the employee's representative (or to the employee if s/he is unrepresented). Within five (5) workdays after receiving the written summary, the employee or representative may submit comments to it. The comments will be added to the official record and will be considered by the Employer before a final decision on the matter is rendered.

- C. If an employee chooses to make an oral reply, it may be held via audio or videoconference when the employee, the employee's representative, and the oral reply official do not work in the same commuting area. However, if the employee or the employee's representative requests a face-to-face meeting, management will determine where the face-to-face reply will be heard and the employee and one representative will be reimbursed for travel and per diem that is reasonable under GSA regulations.

SECTION 9

Reasonable requests for extensions of time for submitting or delivering a reply will be granted.

SECTION 10

In reaching a final decision, the Employer may not rely on any employee performance that the employee has not been given the opportunity to reply to either orally or in writing.

SECTION 11

A written decision to retain, reduce in grade, or remove an employee will be issued to the employee and will:

- A. Specify directly or by reference the instances of unacceptable performance by the employee on which the reduction in grade or removal is based;
- B. Unless proposed by the Head of the Agency, be concurred on by a management official who is in a higher position than the official who proposed the action; and
- C. Specify the effective date, the action to be taken and the employee's right of appeal.

SECTION 12

If, due to performance improvement by the employee during the PIP period, the employee's reduction in grade or removal is not proposed, and the employee's performance continues to be acceptable for one (1) year from the date of the notice of the PIP, any entry or other notation of the PIP shall be removed from the files of the Employer.

SECTION 13

- A. The Employer will make available for review a copy of the material relied upon for the proposed action, subsequent to the advance notice being delivered to the employee. If requested by the employee or her/his representative, the Employer will furnish a copy of such material.
- B. Nothing in this section is to be construed as a waiver of the employee's or Union's right to request additional information under other authorities such as the Freedom of Information Act, Privacy Act, or Civil Service Reform Act.

SECTION 14

Within thirty (30) calendar days of the effective date of the action, final Employer decisions may be challenged by the employee in only one of the following ways:

- A. By filing an appeal with the MSPB in accordance with applicable law and regulations (currently within thirty (30) calendar days);
- B. Under this Agreement and with the Union's concurrence, by appealing directly to binding arbitration (which may include an allegation of discrimination), within the time frame set forth in Article 46, Arbitration, of this Agreement; or
- C. By filing a formal complaint of discrimination filed under the administrative EEO process.

The final decision letter that is issued to the employee will contain a statement of his or her right to challenge the action in one of these three (3) ways. Once an employee has elected one of these procedures, the employee may not change thereafter to a different procedure.

SECTION 15

To the extent not prohibited by law, the Employer will provide the Union with unsanitized copies of all unacceptable performance action proposal and decision letters, no later than the next workday. The Employer will provide this notice to the designated representative, if one is known, or to the local chapter president.

SECTION 16

If at any time before a removal action is effected, an employee raises as a defense that he or she is suffering from a disability, the employee must submit acceptable medical documentation simultaneously with any request for reasonable accommodation. The Employer will accommodate the employee to the extent that the employee is a "qualified handicapped Individual" under the law based on the medically documented disability. A request for accommodation does not preclude the Employer from proceeding with a performance-based

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action. Simply, the Employer will design to the maximum extent possible, an accommodation to address the employee's physical or mental limitations so that the employee has as much of a chance to achieve acceptable performance as a non-disabled person.

SECTION 17

- A. If the employee is the subject of removal for unacceptable performance, the Employer will consider the employee's request to stay the action for a reasonable period of time to allow a determination to be made concerning any pending application for disability retirement filed prior to the effective date of the action. If the Employer agrees to stay the removal action but at any subsequent time determines that a continuation of the stay poses an undue hardship on the Employer or the application for disability retirement has no reasonable probability of being approved, the Employer may process the adverse action.
- B. If the Office of Personnel Management approves the application for disability retirement of the employee covered by Subsection A, above, the employee may elect to use his or her available sick leave prior to retiring, to the extent allowed by law, rule or regulation.

ARTICLE 34

DETAILS & TEMPORARY PROMOTIONS

SECTION 1

- A. The term "detail" as used in this Article means a temporary assignment of an employee to a different classified position within the bargaining unit, or to a different set of unclassified duties, for a specified period of time, with the employee returning to her/his position of record at the end of the detail. The employee continues to encumber the bargaining unit position from which s/he was detailed during the term of the detail.
- B. The term "temporary promotion" as used in this Article means a temporary assignment for a specified period of time to a position at a higher grade than the one the employee currently holds where the employee is expected to return to his or her regular duties and grade at the end of the assignment. An employee must meet the qualification standards and other legal and regulatory requirements, such as time-in-grade for the higher-grade level before he or she can be temporarily promoted.
- C. The provisions of this Article apply to details to bargaining unit positions at the same or higher grade. Details may also be used to provide opportunities for interchange programs or developmental assignments. Selections for details will be made on a fair and equitable basis.

SECTION 2

- A. The Employer agrees that where it is expected that an employee will be detailed to a higher-graded bargaining unit position for a period in excess of thirty-one (31) and fewer than one hundred twenty (120) consecutive days, the employee will be temporarily promoted to that position effective at the beginning of the first full pay period following the beginning of the detail, provided that the employee meets the appropriate qualification standards and other legal and regulatory requirements, such as time-in-grade.
- B. Areas of consideration for details will be based on legitimate work-related reasons. To the extent feasible, information about detail opportunities will be disseminated to all eligible employees within the defined areas of consideration.
- C. Employees detailed or temporarily promoted to classified positions will be provided with a copy of the position description. Employees detailed to unclassified duties will be provided with written "Statement of Duties." The temporary assignment supervisor will generally meet with the employee to discuss what is expected from the employee. This meeting/discussion will normally be held within the first two workdays of the detail or earlier, if appropriate.

- D. For details or temporary assignments of less than one hundred twenty (120) calendar days, the temporary assignment supervisor upon request from the employee, will provide a written report on the employee's performance to the employee's supervisor of record and provide a copy of that report to the employee. The Employer agrees to consider the appraisal or feedback in preparing the employee's rating of record for the current appraisal year.
- E. When an employee is detailed to a higher graded position for more than 120 days and performs at an acceptable level of competence in that position, but is not eligible for a temporary promotion, the Employer will consider granting a special act award or other form of recognition to the employee.

SECTION 3

- A. Selection for details will be accomplished in compliance with Article 36 (Merit Promotion) when the Employer reasonably expects the detail to the higher graded position to last longer than one hundred twenty (120) consecutive days. However, the Employer may elect to use competitive procedures for details of lesser time.
- B. Details of more than thirty (30) consecutive calendar days will be formally documented in the employee's OPF, which may be done electronically. Confirmation of the detail will be provided to or, if electronically-filed, may be printed by the employee.

SECTION 4

In order to ensure a smooth transition between positions:

1. the Employer will provide necessary orientation to the employee at the beginning of any detail;
2. the Employer will provide to an employee who has been on detail to a different work area, the time reasonably necessary to re-familiarize her/himself with the position to which s/he is returning; and
3. the Employer will inform the employee of any changes in operating procedures which affect the manner in which the duties of the position of record are performed.
4. Employees who are detailed or temporarily promoted will normally be relieved of work required in the previous position when the detail or temporary promotion is in effect.
5. When possible, employees returning from detail will be returned to their same workstation occupied prior to the detail.

SECTION 5

Employees rating while on detail or temporary promotion will conform to Article 30

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Performance Management Appraisal Program.

SECTION 6

The Employer retains the right to terminate a detail or temporary promotion at any time.

SECTION 7

The experience that an employee obtains while on a detail or temporary promotion will be credited as experience either in the employee's current position or the position to which s/he is detailed, whichever is more advantageous to the employee, subject to qualification rules and principles.

ARTICLE 35

REASSIGNMENTS

SECTION 1

- A. The Employer has the right to reassign employees. In doing so, the Employer will make reassignments to appropriately classified jobs at the appropriate grade levels. The Employer's decision to reassign will be a bona fide determination based upon legitimate management considerations. The Employer will give reasonable consideration to assertions by the employee that the reassignment will cause undue personal hardship. Reassignment will not be used as punishment, in lieu of disciplinary action, or based on personal favoritism or retaliation.
- B. The Employer will make efforts to minimize the adverse impact on employees involuntarily reassigned under this article.
- C. A reassignment is a permanent assignment of an employee from one bargaining unit position to another bargaining unit position without promotion, demotion or break in service. Reassignments will be carried out in accordance with applicable law, government-wide rule or regulations and this Article. Notwithstanding this definition, the procedures set forth in this Article apply only to substantive Reassignments; they do not apply to personnel actions that are denominated "reassignments" but are only technical in nature (e.g., those that change a position description number, etc.).
- D. The Employer will provide notice of Employer-directed reassignments concurrent with notice to employees.
- E. The Parties agree that decisions concerning reassignments will take into account the goals of increasing career-related flexibility and mobility, and minimizing the need for involuntary reassignments.

SECTION 2

- A. When the Employer decides to fill a position through voluntary reassignment, the Employer will make the reassignment opportunity known to qualified employees via a ten (10) day notice on the e-mail system, unless it has otherwise announced the vacancy through a merit promotion announcement. This is understood by the parties to allow other qualified employees to submit for consideration for the reassignment opportunity and the employer to consider their submission prior to the reassignment. The Employer will make its selection known to employees who expressed an interest.
- B. Employees in identical positions, e.g., same title, series, grade, and qualifying experience may request to exchange positions with one another so long as they do not request payment

of moving expenses from the Employer. Approval or denial of any such request will be in the Employer's sole discretion, but will not be done arbitrarily, capriciously, or for discriminatory reasons.

SECTION 3

Employees are encouraged to make recommendations to their supervisors on improvements in the structure of positions in the unit and to express their interest in being considered for the positions they are suggesting, if such positions are established in the future. The supervisor will give reasonable consideration to such suggestions.

SECTION 4

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

SECTION 5

When an involuntary reassignment involves a change in duty station outside of the local commuting area, the Employer agrees to give the employee forty-five (45) days' advance notice. When an involuntary reassignment involves a change in duty station within the commuting area, the Employer agrees to give the employee at least fourteen (14) calendar days' advance notice. Also, the Employer agrees to give the employee a form SF-50, a copy of the position description of the reassigned position, and a summary of the duties. The Employer will further identify the employee's supervisor and post-of-duty.

SECTION 6

A. Involuntary Reassignments

When the Employer determines that an involuntary reassignment of an employee is necessary, the Employer will use the following procedures:

1. The Employer will identify position, as opposed to employees, from which the reassignment will come;
2. the employee will be given choice of position if more than one position exists; and
3. the Employer shall give employees all necessary information at the time of notification, i.e., relocation expenses information, pay, position description, retirement information,

and separation information.

B. The Employer will then identify within the group of positions those employees who are best suited to fill the position. In determining who is best suited, the Employer will apply factors such as, but not limited to:

1. The Employer's need to develop a balance of experienced and trained employees and obtain the most effective distribution of needed skills and other necessary characteristics;
2. Qualifications and skills needed for an employee to adequately perform in the position.
3. Cost effectiveness, workload considerations, and staffing balance; and
4. Whether a candidate for involuntary reassignment has previously experienced other involuntary reassignments.

SECTION 7

The Employer will timely provide adequate and appropriate training for the reassigned employee, if necessary. In addition, a reasonable amount of time will be allowed the employee in which to become proficient in new duties.

ARTICLE 36

MERIT PROMOTION

SECTION 1

It is agreed that all promotions to bargaining unit positions, and all other personnel actions set forth in Section 2 below, will be made using systematic and equitable procedures on the basis of merit and from among properly ranked and certified candidates or from other appropriate sources without regard to race, color, sex, national origin, marital status, age, religion, sexual orientation, labor organization affiliation or non-affiliation, or non-disqualifying physical handicap. This Agreement takes precedence in promotions to bargaining unit positions over any conflicting document, policy or plan.

SECTION 2

A. When merit promotion procedures are to be used, it is understood that this Article applies to all promotion actions to bargaining unit positions not specifically excluded in Section 2.B below. Examples of personnel actions covered are:

1. Filling a position by promotion;
2. Temporary promotions in excess of 120 days;
3. Reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in the competitive service;
4. Transfer to a higher-graded position or a position with more promotion potential than a position previously held on a permanent basis in the competitive service ("a position with more promotion potential" is one in which the Employer may make promotions, without further competition, to the highest grade in the career ladder);
5. Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service;
6. Selection for training which employees are required to take before they may become eligible for promotion to a specific higher-graded position; and
7. Selection for a detail to a higher grade or position with higher promotion potential for more than 120 days.

B. The competitive procedures set forth in this Article will not apply to the following:

1. A temporary promotion for 120 days or less;
2. A detail to a higher-graded position or one with known promotion potential for 120 days or less;
3. Promotion resulting from upgrading of a position without significant change in duties and responsibilities due to the issuance of a new classification or the correction of a classification error;
4. A position change permitted by reduction-in-force regulations;
5. Promotion within a career ladder or from a trainee position for which competition was held at an earlier date;
6. Promotion of the incumbent of a position that is reclassified at a higher grade due to the accretion of additional duties and responsibilities;
7. A career ladder promotion following the non-competitive conversion of a student participating in the Student Career Experience Program;
8. Promotion, through exercise of his/her priority consideration right, of a candidate who was not given proper consideration in a prior competitive promotion action;
9. Reassignment, demotion, reinstatement or transfer to a position having no higher promotion potential than the potential of the position the employee currently holds or previously held on a non-temporary basis;
10. Promotion of an employee to a grade previously held on a permanent basis, provided that the employee was not demoted or removed for personal cause; and
11. Selection from the re-employment priority list;

SECTION 3A

In the initial search for qualified applicants the minimum area for consideration will be sufficiently broad enough to ensure the availability of at least three high-quality candidates, taking into account the nature and level of the position being announced.

SECTION 3B

The area of consideration may be restricted where circumstances necessitate the selection from a particular organizational element within the unit due to budgetary, staffing, or other constraints.

SECTION 4A

All positions which are filled through the competitive promotion procedures of this Article will be publicized through vacancy announcements issued under the authority of the servicing Human Resources Center (HRC). All vacancy announcements, depending upon the area of consideration, will be posted on the servicing Intranet and the Internet at (<http://www.usajobs.opm.gov>) via mandatory posting of vacancies through the Office of Personnel Management (OPM) Federal Job Opportunities Bulletin (FJOB). A copy of any announcement may be obtained by contacting the servicing HRC. Employees will also have the option of being notified via email of future vacancies posted through the automated staffing system.

SECTION 4B

Vacancy announcements will be open for a minimum of ten (10) workdays for bargaining unit positions which must be filled in accordance with the competitive procedures covered in this Article.

SECTION 4C

At a minimum, every vacancy announcement will contain:

1. Announcement number;
2. Opening and closing dates;
3. Position title, series, grade, and the number of positions to be filled;
4. Organizational and geographic location;
5. Any known promotion/career-ladder potential;
6. Applicable area of consideration;
7. Summary of major duties, including an estimate of the amount of travel, if applicable;
8. Summary of minimum qualification standards to be applied, along with any selective placement factors;
9. Evaluation methods and criteria to the extent appropriate;
10. Procedures for applying;
11. Statement of equal employment opportunity; and
12. Bargaining unit status.

SECTION 4D

D. Vacancy announcements will be posted in all locations within the same commuting area where

computer access is not available. The Employer agrees to address concerns raised by the Union regarding computer access.

SECTION 5A

Employees who wish to be considered for a posted vacancy must apply by submitting information and/or documents required in the vacancy announcement. If an appraisal is required by the vacancy announcement, an employee may submit a statement that s/he is challenging the appraisal. An employee may also include a rebuttal statement regarding the most current performance appraisal.

SECTION 5B

To be considered for a vacancy, candidates must submit all required application material in such a way that the information provided is complete, accurate, legible, and timely. The automated staffing system will send an email confirming receipt of an employee's application.

SECTION 5C

In order to be considered under the automated staffing system, applicants must transmit an electronic application and all required supplemental materials via the automated staffing system website before midnight Eastern Standard Time (i.e., by 11:59 P.M. Eastern Standard Time) on the closing date stated in the vacancy announcement. If sending an electronic application poses a hardship, applicants may contact the issuing HRC prior to the closing date for assistance. Reasonable accommodations will be made for good cause. Employees may request, and be granted, assistance with automated staffing system. Such assistance will be on duty time.

SECTION 5D

Employees on extended periods of absence (i.e., on detail, travel, military, leave) will be given automatic consideration for specific kinds of jobs during that period of extended absence provided the employee:

1. Submits written notification to the HRC prior to departure which specifies the anticipated duration of the absence and specific series, grade level(s), program or office, and tour of duty for which consideration is sought; and
2. Submits a current SF-171, OF-612, or resume and performance appraisal in triplicate for HRC.

SECTION 6A

The Employer agrees that selective placement factors will only be used when they are essential to the successful performance of the position. In such cases they will constitute a part of the minimum requirements of the position and must be stated in writing. A copy of any selective placement factors will be retained in the merit promotion file.

SECTION 6B

Candidates will be evaluated against basic eligibility requirements, selective placement factors, and other appropriate criteria established for the position.

SECTION 6C

The servicing HRC will determine which applicants meet the established minimum qualifications for the position at each announced grade.

SECTION 7A

Rating and ranking of applicants will normally be accomplished by use of the automated staffing system.

The initial screening of candidates to determine eligibility (i.e., "minimally qualified") will be accomplished through the automated self-certification process in which the applicant will respond to a series of ranking questions included in the vacancy announcement. A score based on those responses will determine eligibility for further consideration. Applicant scores are subject to adjustment based on an evaluation by a Human Resources Center representative or designated management official that the applicant's self-rating is not appropriate. Any representative or official that makes adjustments must have knowledge of the position being filled and must not be a supervisor over the position, including selecting and recommending officials. A complete record of any adjustments, including the date of an adjustment, the reasons therefore, and the name/title of the individual making the adjustment(s), will be maintained in the automated staffing system data base, a copy of which is available for the affected employee's review.

In the event that the automated staffing system is not available or for other business reasons it is not used, all applicants found to be minimally-qualified will then be rated and ranked by an HRC representative or a panel that will consist of at least two individuals, one of whom may be designated as the chairperson. Insofar as practicable, panel membership will include representation of women, minorities, and/or handicapped employees. A representative of the servicing HRC will be available to provide advice and assistance to the panel. At least one panel member must have knowledge of the position being filled. All panel members will hold positions at or above the full performance level of the vacant position. Supervisors over the position, including selecting and recommending officials, will not serve as panel members.

SECTION 7B

An employee who applies for a position and is not found eligible will be notified after the establishment of a roster or a BQ list if the employee supplied an email address during the application process.

SECTION 7C

Candidates using the automated staffing system will be evaluated on the basis of their responses to assessment questions relating to the job analysis and crediting plan that are needed for successful job performance in the position. Automated staffing system questions must be closely related to the principal duties of the position. It is understood that automated staffing system questions will be developed and selected for every position prior to announcing the vacancy.

In the event that the automated staffing system is not available or for other business reasons, it is not used, candidates will be evaluated based upon the KSAs developed from the job analysis and crediting plan their which are needed for successful job performance in the position. KSAs must be closely related to the principal duties of the position. It is understood that KSAs for every position will be developed prior to announcing the vacancy.

SECTION 8A

Under the automated staffing system, all applications will be rated by the system and the servicing HRC representative will evaluate all job-related information submitted by the highest ranking candidates (a) to ensure that the applicants meet the minimum qualifications requirements and, (b) support their responses to the automated staffing system questions in their resumes and narrative responses.

SECTION 8B

All candidates for promotion will be rated and ranked consistent with law, rule, regulation and this agreement.

SECTION 8C

Performance appraisals of record may be used as a supporting document to demonstrate ability to perform the KSAs.

SECTION 8D

Under the automated staffing system, applicants will be tentatively rated and ranked on the basis of their own responses to the ranking questions contained in the vacancy announcement. These initial scores may be subject to adjustment pursuant to the procedures outlined in Section 7.A. Scores may also be adjusted on the basis of information arising from an interview with the applicant. A complete record of any adjustments made on the basis of an interview, including the date of an adjustment, the reasons therefore, and the name/title of the individual making the adjustment(s), will be maintained in the automated staffing system database, a copy of which is available for the affected employee's review.

SECTION 8E

In the event the automated staffing system is not available or, for other business reasons, is not used, candidates will be ranked according to their rating scores assigned by the panel or HRC representative. When a panel is used, the total scores assigned by individual panel members will be averaged to arrive at the final rating for each candidate. Where possible, rating and ranking officials will document the basis for their various assessments, and this documentation will be maintained by the servicing HRC in the merit promotion file for the position.

SECTION 8F

Anyone present during QRB deliberations is prohibited from divulging to any unauthorized person, including the selecting official, any of the following: contents of rating and ranking worksheets, QRB deliberations, and the numerical scores assigned to candidates. If any QRB member violates this provision, the Employer will take appropriate action.

SECTION 9A1

Selection Process

Priority Consideration. Candidates will be referred to the selecting official as described below:

If an employee was erroneously omitted from the "best-qualified" list or otherwise was not given proper consideration, he/she will receive one priority consideration for the next appropriate vacancy. Priority consideration provides for referral of the employee's name and application to the selecting official before referring other candidates. Further, retained employees are also referred as Priority Consideration candidates, but these employees do not "lose" the entitlement if they are not selected. Priority consideration does not provide a selection entitlement. It means that the employee is not required to compete with other employees for promotion; her/his selection may be processed as an exception to this Article's requirements.

In the event that two (2) or more employees are entitled to priority consideration for the same vacancy, they shall each receive priority consideration, as follows:

- a. If the employees became entitled to priority consideration as a result of separate promotion actions, the employee first entitled shall receive the first priority consideration.
- b. If the two (2) or more employees entitled to priority consideration became entitled as a result of the same promotion action, the employee with the highest score will receive the first priority consideration. If there is a tie, management will give consideration to each employee.
- c. If two (2) or more employees are referred for priority consideration, and one (1) is selected before the selecting official reviews the application(s) of the other(s), then the employee(s) who was/were not considered will retain the right to a single priority consideration for the next appropriate vacancy.

The next appropriate vacancy for purposes of priority consideration is the next vacant position requiring the same or similar qualifications, at the same grade and with comparable promotion

opportunities as the position for which the employee failed to receive proper consideration.

- d. An employee who received priority consideration and is not selected will be given, upon request, a written explanation of why he/she was not selected for the position.

SECTION 9A2

CTAP/ICTAP Procedures

If the position remains open after any priority consideration candidates are referred and considered, the HRC will issue the certificate of eligibles and follow the procedures in this Article. After all required steps have been taken, the HRC will identify any applicants who are entitled to placement under the HHS Career Transition Assistance Plan (CTAP) or the Interagency Career Transition Assistance Plan (ICTAP). If any such applicant exists, the HRC will determine if s/he is "well-qualified" as defined in 5 C.F.R. § 330.604(k). Any "well-qualified" CTAP or ICTAP applicant will be selected for and offered the position before any other best-qualified candidates are referred to the selecting official. For purposes of this Article, a CTAP/ICTAP-eligible employee will be considered "well-qualified" if s/he attains a score at or above the cut-off for placement on the best-qualified list.

SECTION 9A3a

If the vacancy is not filled using priority consideration or CTAP/ICTAP procedures, the HRC will furnish the selecting official with the names of candidates available for selection, as follows:

Based upon the results of the evaluation of the candidates by the QRP or HRC, the top five (5) bargaining unit candidates will be submitted to the selecting official. The list of bargaining unit employees will be before the selecting official for at least two (2) workdays prior to forwarding any non-unit applicants.

SECTION 9A3b

The full best-qualified list will be referred to the selecting official with applicants' names listed in alphabetical order.

SECTION 9A3c

Notwithstanding the above, the employees whose point score would place them in a tie for the final position on the "best qualified list" will also be referred to the selecting official.

SECTION 9A3d

Other qualified applicants, not rated and ranked, who wish to be considered for either reassignment, voluntary change to lower grade or re-promotion will be referred separately from the best-qualified candidates, as well as other non-competitive candidates eligible under various other appointing authorities.

SECTION 9A3e

When any bargaining unit candidate identified on the "best qualified" list is given the opportunity to be interviewed by the selecting official, then all "best qualified" candidates identified on that list who are members of the bargaining unit will have an opportunity to be interviewed.

SECTION 9B

The selecting official will make a selection without personal favoritism, without discrimination, and without consideration of non-merit factors. An employee's balance of annual or sick leave may not be used by a selecting official as a reason for selection or non-selection of that candidate. This does not preclude the consideration of existing abuse of leave and its effect on the employee's ability to perform the requirements of the position.

SECTION 9C

The selecting official will make the decision to select or not to select as soon as possible.

SECTION 9D

Alternate or additional selections may be made from a properly-issued best-qualified list within ninety (90) days from the issue date of the promotion certificate if:

1. the original selectee declined or vacated the position; or
2. additional positions are established or become vacant with the same title, series, and grade, which are in the same geographic location (commuting area) as the position announced and are to be evaluated under the same rating schedule or crediting plan criteria.

SECTION 10

Selected employees within HHS will normally be released for promotion to the new position at the beginning of the first pay period that occurs two (2) full weeks after the releasing official has been notified of the selectee's official offer and acceptance of the position. Compelling reasons may delay the reporting date; in such a situation, the promotion will be effected on the earliest feasible date.

SECTION 11A

To the maximum extent possible, applicants applying for bargaining unit positions through the automated staffing system will be notified via email of the results of their application after a selection is made.

SECTION 11B

Unsuccessful applicants may consult and/or obtain advice from, their servicing HRC specialists concerning specific qualifications needed for desired positions and/or a first-line supervisor concerning ways to enhance one's qualifications for positions under his/her supervision. This does not bar the use of the HHS Work Life Center where available to employees.

SECTION 11C

Following completion of the selection process and upon written request to the servicing HRC, employee-applicants will be provided the following information about a position announced under this Article for which they applied in a timely manner:

1. Whether or not they met the minimum qualification requirements for consideration;
2. Whether or not they ranked in the group from which final selection was made (the "best-qualified" list); and
3. The name(s) of the selectee(s) for the position.

If an employee is promoted to a position in the bargaining unit and subsequently, within a year, is demoted for inability to perform at the higher level, the Employer agrees to make reasonable efforts to return the employee to a position equivalent to the one he/she held before the promotion occurred, whenever practical.

SECTION 12

The Employer will maintain required records in merit promotion files for at least two (2) years.

Upon completion of the selection process and submission of a written request to the appropriate management official, a Union representative will be allowed to review any necessary and relevant information concerning the promotion, (except crediting plans) including the merit promotion file, in accordance with applicable law, rule, regulation and this Agreement.

The Union agrees to respect the confidentiality of merit promotion action information and to divulge it only to the extent necessary to fulfill its representational duties properly. If a grievance is filed concerning a merit promotion action, the Employer will provide the Union, upon its written request, with a copy of relevant and necessary documents in the merit promotion file, in accordance with applicable law, rule, regulation, and this Agreement.

Crediting plans and rating schedules are considered highly sensitive documents by the Federal government, release of which is likely to give candidates an unfair advantage in, and/ or significantly compromise the purpose and utility of, the competitive selection process. For that reason, they are generally not released to anyone except those individuals who perform a direct role in a specific selection process. Notwithstanding the above, the Employer agrees to make a case-by-case determination as to whether releasing a given crediting plan or rating schedule to the Union, upon its request, would be appropriate, regardless of the basic policy against releasing such documents. If the Employer decides not to provide access to a crediting plan or rating schedule upon the Union's request,

that decision will be sent to the Union in writing, specifying the reasons for denying access.

SECTION 13

If the Employer decides to release a crediting plan or rating schedule to the Union upon its request, the Union agrees not to disclose the content of the crediting plan or rating schedule to any other bargaining unit employees.

SECTION 14

Although career advancement is the intent and expectation in the career-ladder system, promotions within career ladders are neither automatic nor mandatory. However, career ladder promotions will be made when:

- an employee's performance demonstrates the potential or ability, as determined by the supervisor, to perform the duties at the next higher grade level;
- The current performance appraisal rating is at the "fully successful" level or higher.
- The employee meets minimum time in grade and qualification requirements;
- there is available work of the higher grade level; and
- The promotion is not precluded due to budgetary constraints.

Career ladder promotions will be effective at the beginning of the first full pay period following a determination by the Employer that the employee has met the above criteria.

Grade Retention

Employees who are downgraded as the result of a position classification review will be afforded consideration for re-promotion in accordance with 5 CFR 536.101. Regulations provide that when an employee is placed in a lower graded position as a result of a reclassification, the employee is entitled to grade retention if the position from which he or she is placed had been classified at a higher grade for a continuous period of at least 52 weeks immediately before the placement.

(Grade retention may last for two (2) years).

Pay Retention

1. Pay retention must be granted to an employee whose basic pay would otherwise be reduced as a result of re-classification when the employee does not meet the eligibility requirements for grade retention.
2. An employee's entitlement to pay retention will not terminate if he/she does not apply for a

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vacancy announcement. However, in accordance with 5 CFR 536.308, if the employee declines a reasonable offer of a position, he/she will lose pay retention entitlement. The requirement for the automatic rating and ranking of retained-pay employees extends for one (1) year.

ARTICLE 43

ADVERSE ACTIONS

SECTION 1

This Article applies to all bargaining unit employees who have completed the applicable probationary or trial period, as appropriate, in their current positions. TA

SECTION 2

A. For purposes of this Article, an adverse action is defined under 5 U.S.C. §7512 as a suspension of more than fourteen (14) calendar days, reduction in grade or pay, furlough of thirty (30) calendar days or less, and removal. An adverse action will be taken only for such cause as will promote the efficiency of the service.

B. This article is intended to be applied in compliance with 5 U.S.C. Chapter 75, 5 CFR Section 752, Subpart D, and applicable case law.

C. The Agency may not take an adverse action against a bargaining unit employee on the basis of any reason prohibited by 5 U.S.C. 2302.

~~A. Adverse actions will not be taken for arbitrary or capricious reasons.~~

SECTION 3

In deciding what adverse action may be appropriate, the Agency will give due consideration to relevant mitigating and/or aggravating circumstances, effecting adverse actions, the Employer endorses the use of like penalties for like offenses and progressive discipline. The Employer shall give due regard to the existence of any mitigating and/or aggravating circumstances, the nature of the position occupied by the employee at issue, and any other factors bearing upon the incidents or acts underlying the action. The degree of discipline administered will be proportionate to the offense and the employee's disciplinary history, and will be determined on a case-by-case basis.

SECTION 4

~~A. Decisions of courts and the Merit Systems Protection Board (MSPB), and issuances of OPM,~~

have long recognized that a number of factors (often referred to as the "Douglas factors") as being relevant considerations in determining the appropriateness of a penalty in an adverse action case. The parties agree to take into consideration what is known as the Douglas factors. TA Without purporting to be exhaustive, the Douglas factors generally recognized at the time of execution of this Agreement as being relevant to the setting of the penalty include the following:

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 fully satisfactory level and its effect upon supervisor's confidence in the employee's 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; [Not a Douglas factor]~~
 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. 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.
- B. ~~All of the Douglas Factors may not be relevant in every case. Only those relevant Douglas factors should be considered in setting of a penalty. In determining the relevant factors, each case must be reviewed on a case-by-case basis. Factors may or may not weigh in an employee's favor. Selection of an appropriate penalty must involve a responsible balancing of the relevant factors in the~~

individual case.

SECTION 5

When the Employer proposes to take an adverse action against an Employee, the following procedures will apply:

- A. In all cases of proposed adverse action, except as stated in Section 8 of this Article or when there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, an employee will be given at least thirty (30) calendar days' advance written notice of the proposed action.
- B. This notice will state specifically and in detail the reasons for the action. The Employer will also provide a copy of the proposed written notice to the Union no later than the next workday. The Employer will provide this notice to the designated representative, if one is known, or to the local chapter president. It is understood that the proposal notice is not grievable upon receipt. However, disputes regarding the advance notice of proposed action may be merged in a grievance concerning the final decision of the Employer, after that final decision is issued.
- C. The employee, or his/her designee, will notify the Employer within seven (7) calendar days of receipt of the notice of proposed action that the employee intends to deliver an oral or written reply. An employee will be given ten (10) calendar days from the date s/he receives the notice of proposed action to deliver an oral and/or written reply. Reasonable requests for extension will be granted.
- D. The proposal notice will specify who will hear/receive the oral and/or written reply. This official will be the person who will be making the final decision on the matter, or his/her designee.
- E. The employee will have the right to be represented in the preparation and presentation of his/ her reply. ~~If the employee elects to have a representative, s/he must inform the deciding official, in writing, of the representative's name.~~ The employee and his/her representative will receive reasonable time to prepare the reply in accordance with the terms of Article 10 on use of official time and Article 5 (Employee Rights and Responsibilities).
- F. The proposal notice shall inform the employee of her/his right to review the material which is relied upon to support the proposed adverse action. The term "material relied upon" includes all information contained in the adverse action file that relates directly to the charge(s) and specification(s), whether favorable or unfavorable to either side's position in the matter.
- G. The Employer will make a copy of such material available for review, concurrent with the delivery of the proposal notice to the employee. If requested by the employee or her/his representative, the Employer will furnish a copy of such material prior to the oral reply. Where management has relied upon witnesses to support the reasons for the proposed action, the Employer will make available, as part of the material relied upon, the identity of those witnesses and any written statements. The Employer reserves the right to sanitize any material which is provided to the employee, when required by law.

H. In making a reply, the employee may set forth mitigating circumstances, refute aggravating circumstances, and give reasons as to why the proposed action should not be effected.

I. If an employee chooses to make an oral reply, it may be held via audio or videoconference when the employee, the employee's representative, and the oral reply official do not work in the same commuting area. However, if the employee or the employee's representative requests a face-to-face meeting, management will determine where the face-to-face reply will be held and the employee and one representative will be reimbursed for travel and per diem that is reasonable under GSA regulations.

J. The Employer will provide a written summary of the employee's oral reply. A copy of the summary will be included in the material relied upon, and it will also be provided to the employee's representative (or to the employee if s/he is unrepresented). Within five (5) workdays after receiving the written summary, the employee or representative may submit comments on it. The comments will be added to the official record and will be considered by the Employer before a final decision on the matter is rendered.

K. The Employer agrees that the employee may use the same means as the Employer does to take notes during the oral reply.

L. Nothing in this section is to be construed as a waiver of the employee's or Union's right to request additional information under other authorities such as the Freedom of Information Act, Privacy Act, or Civil Service Reform Act.

SECTION 6

The final decision in an adverse action covered by this Article must be made by a higher level official than the one who issued the notice of proposed action, unless the proposing official is the head of an OPDIV/STAFFDIV, in which case the decision will be made by an appropriate official identified by the Employer. The decision letter will state which charge(s) is/are sustained and the reason(s) therefor; and will respond to relevant defenses raised by the employee.

SECTION 7

In any case where the charges are premised upon off-duty misconduct, the proposal and decision will describe the relationship (often referred to as the "nexus") between the misconduct and the employee's position.

SECTION 8

In the event the Employer sustains the charge(s) and effects an adverse action against the employee, s/he may elect to challenge the action through only *one* of the three procedures below:

- A. an appeal to the MSPB in accordance with applicable law and regulation;
- B. under this Agreement, going directly to Arbitration (which may include an allegation of discrimination), with the Union's concurrence;

C. a formal complaint of discrimination filed under the administrative EEO process.

The final decision letter issued on the adverse action to the employee will contain a statement of her/his right to challenge the action in *one* of the above three procedures. Once an employee has elected one of these procedures, the employee may not change thereafter to a different procedure.

SECTION 9

A. Under ordinary circumstances, an employee whose removal has been proposed shall remain in a duty status in his/her regular position during the advance notice period. In those circumstances where the Employer determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the Employer may consider whether any of the following alternatives is preferable:

1. Assigning the employee to duties where he/she is no longer a threat to safety, the Agency mission, or to Government property;
2. Placing the employee on leave with his/her consent;
3. Carrying the employee on appropriate leave (annual, sick, leave without pay, or absence without leave) if he or she is absent for reasons not originating with the Employer.

B. If none of these alternatives is selected, the Employer may place the employee in a paid, non duty status during all or part of the advance notice period, if otherwise consistent with applicable law, rule or regulation. The Employer may also curtail the notice period when it can invoke the provisions of 5 CFR 752.404(d) (1) (the "crime provision"). This provision may be invoked even in the absence of judicial action if the Employer has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed.

SECTION 10

The documentation supporting an adverse action will be purged/destroyed pursuant to applicable rule(s) for the system(s) of records in which the documentation is maintained. If an adverse action is overturned, appropriate action will be taken with respect to all other records (e.g., SF-50) in accordance with the disposition of the case.

SECTION 11

Records of disciplinary and adverse actions will remain in an employee's OPF no longer than the regulatory minimum period and the Employer will protect the privacy of those records so that no one sees them who does not have authority under the regulations.

ARTICLE 44

DISCIPLINARY ACTIONS

SECTION 1

This Article applies to all employees who have completed the applicable probationary or trial period, as appropriate.

SECTION 2

- A. For purposes of this Article, disciplinary actions include suspensions for fourteen (14) calendar days or fewer and reprimands reduced to writing.
- B. Disciplinary actions exclude counseling/warnings, whether oral or in writing, and admonishments, whether oral or in writing. When an employee is counseled/warned in writing, the employee may respond in writing and have the response attached to the counseling document.

SECTION 3

- A. In effecting disciplinary actions, the Employer shall endorse the use of like penalties for like offenses and progressive discipline. The Employer shall consider the existence of any mitigating and/or aggravating circumstances, the nature of the position occupied by the employee at issue, and any other factors bearing upon the incident(s) or act(s) underlying the action. The degree of discipline administered will be proportionate to the offense and will be determined on a case-by-case basis.
- B. In determining the appropriate penalty to propose and/or impose in a disciplinary action, the Parties agree that it is appropriate for supervisors to consider and balance a variety of circumstances as pertinent to the case, which may result in mitigation or aggravation. Examples of such circumstances, may include, but are not necessarily limited to, the employee's past work and disciplinary records, length of service, the potential for her/his rehabilitation, the seriousness of the offense and its relation to the employee's duties and its impact on the agency, the consistency of the penalty with those imposed on others in similar situations, potential alternative sanctions to deter future misconduct, etc.

SECTION 4

- A. Disciplinary actions will not be taken for arbitrary and capricious reasons.
- B. No employee will be disciplined except for such cause as will promote the efficiency of the service.
- C. An employee will not be disciplined for off-duty conduct unless a relationship (commonly referred to as nexus) is established between the charged conduct and the efficiency of the service. In cases of off-duty misconduct, the proposal and decision letters will describe the relationship (often referred to as nexus) between the misconduct and the employee's position.

SECTION 5

When the Employer takes a suspension action against an employee, the following procedures will apply:

- A. The written proposal will be delivered no fewer than fifteen (15) days prior to taking the disciplinary action and will contain the specific reasons for the proposed action, stated in detail. It is understood that the proposal notice is not grievable upon receipt. However, disputes regarding the proposal may be merged into a grievance concerning the final decision of the Employer, after that final decision is issued.
- B. The employee will be given fourteen (14) calendar days from the date he/she receives the notice of proposed disciplinary action in which to deliver an oral and/or written reply. Reasonable requests for extensions of time will be granted. The proposal notice will specify who will hear/receive the oral and/or written reply. This official will be the person who will be making the final decision on the matter, or his/her designee.
- C. The employee and his/her representative will be given reasonable time to prepare the reply, in accordance with the terms of Article 10, Official Time, and Article 5, Employee Rights, of this Agreement.
- D. The proposal notice will inform the employee of his/her right to review the material relied upon to support the proposed action, and the Employer will make a copy of such material available for review, concurrent with the delivery of the proposal notice to the employee. If requested by the employee or his/her representative, the Employer will furnish a copy of such material prior to the oral reply. The Employer reserves the right to sanitize any material that is provided to the employee, when required by law.
- E. Where management has relied upon witnesses to support the reason for the proposed action, the Employer will make available as part of the material relied upon any written statements taken from them. The term "materials relied upon" includes all documents relied upon to formulate the charges and specifications contained in the disciplinary action case file.
- F. In making a reply, the employee may set forth mitigating circumstances, refute aggravating

circumstances, and/or give reasons why the proposed action should not be effected.

- G. If an employee chooses to make an oral reply, such reply will be made at the worksite of the employee if both s/he and the deciding official work in the same location. When the employee and deciding official are not in the same location, an oral reply will be delivered by audio- or video-conference, as circumstances permit, unless otherwise determined by the Employer for purposes of that case only.
- H. The Employer will make a written summary of the employee's oral reply. A copy of the summary will be included in the material relied upon, and it will also be provided to the employee's representative (or to the employee if he/she is unrepresented). Within five (5) workdays after receiving the written summary, the employee or representative may submit a response. The response will be added to the official record and will be considered by the Employer before a final decision on the matter is rendered.
- I. The final decision in a disciplinary action covered by this Article must be made by a higher-level official than the official who issued the notice of proposed action, unless the official is the head of an OPDIV/STAFFDIV, in which case the decision will be made by an appropriate official identified by the Employer. The decision letter will state which charges is/are sustained and the reason(s) therefore, and will respond to relevant defenses raised by the employee.

SECTION 6

In the event the Employer sustains the charge(s) and effects a disciplinary action against the employee, s/he may elect to challenge the action in only *one* of the following ways:

- 1. Through the negotiated grievance procedures of this Agreement;
- 2. A formal complaint of discrimination filed under the administrative EEO process; or
- 3. An appealable action involving a prohibited personnel practice filed with the MSPB, to the extent allowable by law.

The final decision letter that is issued on the disciplinary action to the employee will contain a statement of her/his right to challenge the action in one of these three ways. Once an employee has elected one of these procedures, the employee may not change thereafter to the other procedure. Grievances over suspensions will start at the final step of the grievance procedure; grievances over all other disciplinary actions will start at the first step of the grievance procedure. After completion of the grievance procedure, the Union has the option to appeal a disciplinary decision to binding arbitration.

SECTION 7

- A. Letters of reprimand will be retained in the employee's Official Personnel Folder (OPF) for the period of time specified in the letter, which may not exceed two (2) years from the date of

the incident.

- B. After no more than two years, a letter of reprimand will be timely purged from the employee's OPF. After no more than four years, the Employer will purge these records from all ER/LR files.
- C. Oral admonishments or oral reprimands that are reduced to writing will be retained by the employee's supervisor for the period of time specified in the admonishment, which may not exceed one (1) year from the date of issuance of the document. After no more than two years, a letter of reprimand will be timely purged from the employee's OPF. After no more than four years, the Employer will purge these records from all ER/LR files.

SECTION 8

To the extent not prohibited by law, the Employer will provide the Union with copies of all admonishments, written reprimands, and proposal and decision letters for suspensions of fourteen (14) days within one (1) workday of issuance to employee. One (1) copy shall be provided to the chapter office that represents the affected employee.

SECTION 9

Alternative discipline is an optional, non-traditional approach to employee discipline, which provides for a variety of both punitive and non-punitive remedial correction. The Employer and the Union encourage the use of alternative approaches to traditional disciplinary actions. The goal of such an approach is to positively change an employee's conduct by offering an alternative means of correcting such conduct. The Employer will publicize to supervisors the benefits of alternative discipline and will include such information on alternative discipline in its penalty guide policy. The Employer will recommend that traditional discipline and alternative discipline should not normally be combined. Alternative discipline is offered solely by agreement of the parties. Under no circumstances is alternative discipline required to be used.

ARTICLE 50

HEALTH AND SAFETY

SECTION 1

- A. The Employer will provide a safe and healthy work environment for employees. As such, the Employer will comply with the applicable standards of the Occupational Safety and Health Administration as well as with all relevant health and safety codes and standards established and mandated by an authorized government entity. The Employer will maintain work area temperatures within acceptable ranges to the maximum extent possible.
- B. Each employee has a responsibility for his/her safety and an obligation to observe established health and safety rules and precautions as a measure of protection for him/herself and others. Employees will not engage in willful misconduct that causes or will likely cause the Employer to be in violation of any rule, regulation, order, permit or license issued by a regulatory authority.
- C. Each employee will become familiar with and observe health and safety-related policies and procedures and guidelines issued by the Employer, which are applicable to the employee's own actions and conduct. If the Employer provides employees with safety equipment, personal protective equipment, or any other devices and procedures that the Employer considers to be necessary for employee protection, the employees will use such equipment as directed by the Employer.
- D. Behavior that is considered threatening or intimidating and/or violence in the workplace are unacceptable forms of conduct and will not be tolerated.

SECTION 2

- A. In the course of performing their assigned work, employees will be alert to the presence of unsafe or unhealthy conditions. Employees will attend mandatory safety training provided by the Employer. When such conditions are observed, it is the employee's right and responsibility to report them to supervisory personnel and/or facility safety and health personnel, such as the Health and Safety Officer. The employee may also notify a member of the Health & Safety Committee or a Union representative if the employee wishes to remain anonymous. That person will then immediately forward the information to the appropriate management official(s). Where an employee has notified the Employer of an unsafe condition, the Employer will look into the matter as appropriate. ~~The Employer will notify the Union of the results and give the Union an opportunity to be present during any formal discussions between the Employer and employee pertaining to a safety or occupational health hazard.~~

~~B. If an employee makes an oral report to the Employer of an unsafe or unhealthy working condition, the Employer shall reduce that report to writing. Where the problem is not corrected by the beginning of the second workday, the Employer will alert the appropriate chapter president of the condition no later than the end of that workday. The Union will be given a copy of the employee's report and any report of the corrective action within a reasonable period of time.~~

~~Copies of health and safety reports in the possession of the Employer, including the results of testing's and inspections, will be made available to the Union, to the extent practicable within three (3) days of receiving said report, in accordance with law and regulations. Reports will be provided in accordance with the provisions of the Privacy Act and other applicable laws.~~

C. In the case of imminent danger situations, employees or the Union will make reports to the Employer by the most expeditious means available. The term "imminent danger" means any conditions or practices in any workplace which are such that a danger exists that could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through normal procedures. In such situations, an employee may decline to perform assigned tasks in the usual work area when s/he has a reasonable belief that, under the circumstances, the task or area poses an imminent danger. However, in these instances, the employee must report the situation to his/her supervisor, another supervisor who is immediately available, and/or facility safety and health personnel. After making the report, the employee may leave the affected work area but must hold him/herself available for work under appropriate working conditions in another work area. If these procedures are strictly followed, the employee will continue to be paid as long as s/he remains available to, and does if requested, perform any work as directed by the Employer. An employee who abuses these procedures may be subject to disciplinary action.

~~D. The Employer will assure that each building or work area occupied by unit employees has an annual safety and health inspection. The Union will be given an opportunity to designate a local representative of the Union to be present for all such inspections. In addition, the Union will be entitled to be included on any other health and safety inspection involving the Employer. When feasible, the Employer will give at least two (2) workdays advance notice of the date an inspection is scheduled. Such notice will provide the time and place where the inspection will begin. Prior to the scheduled inspection the Union will notify the Employer of either the name of its representative who will be present or its intent not to participate. When the designated Union representative is an employee, the representative may participate in the inspection without charge to leave. If multiple sites are being inspected simultaneously, the Union shall have the right to designate a local representative to be present at all sites. Employee representatives will be released from duty in accordance with Article 10.~~

SECTION 3

A. The Employer will take steps on at least an annual basis to ensure that employees are familiar with proper post emergency procedures (e.g., active shooter protocols, shelter in place, COOP, names and contact information for Employer safety

~~officers) and location of emergency supplies and resource materials. When emergencies occur, the Employer will take all steps necessary to ensure employee safety. The Union will assist in this effort by encouraging its members to follow established procedures and by having its representatives serve as wardens/monitors/coordinators after appropriate training has been provided.~~

- B. The Employer will ~~appropriate~~ provide emergency supplies and equipment at each office location and inform employees as to their location.

SECTION 4

- A. The Employer will provide the normal and routine services offered under existing contracts with Health Units. Where considered feasible based on the location of the Health Unit, such services will include care for employees during emergency situations and until proper outside medical authorities can reach the employee. Employees needing first aid should go to the Health Unit where available. As testing, inoculations, and special programs are offered by the Health Unit, such programs will be made available to employees subject to any limitations established on the Health Unit and budgetary restrictions imposed on the Employer. ~~If the Health Unit is permanently closed, the Employer will notify the Union and negotiations will take place in accordance with this Agreement. The Union will also be notified by the Employer if the Health Unit reduces its services.~~ In addition, the Employer will provide employees with medical screenings and physicals that are required for identified job descriptions and/or are within the bounds of its contract for these services. Health Unit visits will be approved by the Employer on duty time or as excused absence, provided the employee informs his/her leave approving official that the requested time away from the office will be used for Health Unit services.
- B. The Employer will provide employees, when practical, with information concerning of the nearest medical service facility/clinic where emergency medical services can be provided. Employees will also be informed of the procedures to use to contact the local emergency management system (e.g., paramedics, fire departments, police departments, ambulance services, etc.). Employees should assume personal responsibility for taking appropriate steps to inform themselves about emergency services and procedures.
- C. Contingent upon funding ~~and an assessment of needs~~, the Employer will offer cardiopulmonary resuscitation (CPR) and automatic external defibrillators (AED) training to ~~all~~ interested employees ~~at all facilities. The training will be offered at least annually on duty time. The Employer will arrange for such training in an appropriate form and setting (e.g., within an OPDIV/STAFFDIV, in combination with other OPDIVS of HHS, or on a multi-agency basis). The Employer and the Union will encourage employees to take the course. If the local facility emergency action plan contains provisions for publicizing the names and locations of CPR/AED trained employees, the employee must first give permission to the Employer to publicize his/her name.~~
- D. Other health promotion and disease prevention information will be made available by appropriate means.

- ~~E. The Employer will provide the local Union chapter with the name of the Employer safety officer or other contact person for health and safety matters, as well as the location and availability of relevant resource materials.~~

SECTION 5

~~The Employer agrees to continue to provide periodic health and safety presentations for employees. Health and safety program information will be disseminated and posted in accordance with 29 CFR 1960.12(e).~~

SECTION 6

~~The Employer will provide advance notice to the Union when physical construction will occur to a worksite and when pesticides, paint, carpet glue, HVAC cleaning agents, and similar construction and maintenance chemicals are used in a large scale application. In such cases, provisions will be made for individuals with administratively acceptable documented special health conditions. Where possible, the notice will be given at least forty-eight (48) hours before the construction occurs or before the above named chemicals are to be used. When the use of such chemicals occurs in buildings not controlled/managed by the Employer, the Employer will notify the Union Chapter President as soon as it is aware of such use. Warning statements and Material Safety Data Sheets (MSDS) given to the Employer or its agents by the organization applying such materials will be available for inspection. When the Employer determines that there is a reasonable likelihood of harm due to application of such materials or a reasonable likelihood of disruption due to the construction, employees will be directed to move to another work area until their area is determined to be safe for use. Emergency situations may arise that require the use of such chemicals or that require unplanned construction. In these instances, the Employer will respond and notify the Union as soon as possible.~~

SECTION 7

- A. The Employer will comply with all government-wide regulations relating to health benefit coverage for employees and open season procedures.
- B. The Employer will furnish to employees, as early as possible during the open season, with the information on electronic sources for materials relating to health benefit coverage, including, when available, the open season instructions, a list of the benefit rates for all OPM-approved health benefit plans for which employees qualify (including any plan offered by the Union), and all summaries of coverage (both in cross-plan comparison and plan-specific formats, if available) provided by OPM. Open Season information is available from the OPM Website at <http://www.OPM.Gov/insure/index.html>.
- ~~C. The Employer will provide hard copies of each OPM-approved plan for which employees qualify in those locations where electronic access is not available.~~

SECTION 8

When it is necessary for an employee to leave work and return home because of illness or incapacitation, the Employer will, to the extent possible, facilitate in securing a means to transport the employee home. The Parties recognize that the employees' monetary, tort, and pecuniary liability is governed by statute and decisions of the Comptroller General and the Federal Courts. The Employer assumes only that responsibility and liability allowable by law, regulation, or such decisions.

SECTION 9

- A. Subject to budgetary constraints, the Employer shall provide employees who are required to use computers on the job with work stations or desks that are designed for computer monitors and that may include adjustable keyboard trays, adjustable work surfaces which are large enough to accommodate the computer workstations, e.g., printers manuals, work papers, and any other equipment required by the employee to perform the duties and responsibilities of their positions. Wrist rests may be provided if requested by individual employees.
- B. As furniture is replaced, the Employer shall provide employees, at their request, with ergonomically designed furniture that meets commonly accepted industry standards, e.g. chairs that shall include arm rests, etc. If more than one (1) style of chair is available at any facility, bargaining unit employees shall be offered an opportunity to choose the chair of their choice.

SECTION 10

Joint labor-management Health and Safety Committees, with equal representation, may be established or continued in each OPDIV in the Headquarters location of each OPDIV, in each Regional Office (on a multi-OPDIV basis if the Employer so desires), and/or at a separate field office level. The Committees' function and procedures may include studying health and safety problems and pursuing recommendations for their resolution to appropriate officials. Existing Health & safety Committees shall continue to operate for the duration of this Agreement and under the same procedures and practices as are currently in effect.

SECTION 11

- A. When employees are injured in the performance of their duties, they will be informed by the Employer of the procedures for filing a claim for benefits under the Federal Employees Compensation Act. Information will be provided about the type of benefits available, including specific reference to their option to file a claim for disability compensation if they are disabled for work.
- B. The Employer will provide an employee who is injured while in work status with a copy of the current Pamphlet CA-550, which answers questions about the Federal Employees Compensation Act. A copy of Pamphlet 550 will be kept in the servicing personnel office and on the HHS intranet.

SECTION 12

~~The Employer will provide the Union copies of reports of all health and safety accidents that result in loss of time from the job. At the Employer's option, these may be provided to the chapter(s) with jurisdiction over the place where the accident happened.~~

SECTION 13

- A. Employer drug testing will be carried out in accordance with all applicable laws and government-wide rules and regulations.
- B. Test results will be protected under the provisions of the Privacy Act of 1974, 5 U.S.C. section 552a, and Pub. L. 100-71, section 503. Employees subject to drug testing will, upon written request, have access to any records relating to their drug test(s).

ARTICLE 59

PEER REVIEW

The following rules apply to the operation of the various FDA peer review processes:

- By the end of the first week of January and July of each year, the Employer will provide the Union with a list of current Peer Review Programs, including the name of the program, the name of the organization in which the program operates, the date(s) on which persons will be evaluated for peer review, the contact person for each program and the materials to be submitted to be considered for peer review.
- An employee will be given a peer review so long as he or she has the minimum qualifications necessary for promotion to the next grade or category, i.e., an employee may self-nominate for peer review.
- Employees who nominate themselves for Peer Review need only clearly state such in the cover memorandum transmitted with their materials to the Peer Review Committee Chair. No transmittal cover sheets will be distributed other than to the Committee Chair and Executive Secretary. They will not be shared with any other member of the Peer Review Committee.
- The preparation of materials by employees who nominate themselves for peer review will follow the same method of preparation as any other peer review nominee.
- Peer Review Committees shall evaluate all peer review nominations in the same manner.
- An employee will be allowed to nominate three (3) persons for membership on the committee and the Employer will generally select, absent just case, one (1) of the three (3) nominees for the committee to serve as Principal Reviewer for the employee's case and as a regular member of the committee for evaluating the other cases before the committee, so long as they are qualified.
- A record will be kept of the proceedings that will contain among other things a list of the factors considered, the determinations as to each factor, and an analysis of the employee level of work measured against the standard and the final decision. For example, if an employee's level of independence did not meet the grade level criteria, an explanation will be provided. Furthermore, no records in the case file will be destroyed after the meeting. Personal notes of the committee members are excluded from this provision.
- The employee may submit any materials within reason and they will be included in the file that is put before the review committee. However, in order for the review to go forward, the

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employee must submit the documents minimally required for a review by the Agency.

- Employees will be given an opportunity to appear before a peer review committee to make summary statements generally not longer than thirty (30) minutes and answer any questions.
- An employee will be promoted in a timely manner upon successful completion of the review process, normally at the end of the next full pay period.
- Unsuccessful candidates may ask for an explanation in writing as to why their candidacy was unsuccessful and specific ways to improve their chances in the future. The Peer Review Committee will provide a detailed response to such inquiries normally within twenty (20) workdays of receiving the request.

New HHS Article XX – Interpretation: NTEU Statement

HHS proposed this new article as a limitation on the collectively bargained agreement and, as such, it is in direct conflict with the articulated purpose of the Federal Service Labor-Management Relations Statute (the Statute). Section 1(a)(1) provides, in relevant part, that collective bargaining “safeguards the public interest” and “contributes to the effective conduct of public business.” As the sole purpose of the Agency’s proposed language is to eliminate and safeguard against collectively bargained procedures and processes, this Article is counter to the Statute’s goal of “an effective and efficient Government.”

Moreover, this proposal is inconsistent with language proposed by HHS in Articles 9 and 10. There, the Agency has proposed that, in the event of a conflict with another article, Article 9 and 10 would control. For example, in Article 10, Section 2B, the Agency proposed that no official time be granted for §7131(d) representational activities. Under the law, however, NTEU has a statutory right to 7131(d) time that is reasonable, necessary and in the public interest. Because Article 10 denies NTEU statutorily protected rights, it is inconsistent with this proposal that would protect this right, consistent with § 7131(d).

Limiting NTEU’s collective bargaining rights to those expressly provided in law and regulation is clearly illegal. Section 7103(a)(12) defines “collective bargaining” which is (14) defines “conditions of employment;” neither would be necessary if dictated solely by, and limited to, what is provided in law, rule and regulation. A real-life example is the Work Schedules Act (5 U.S.C. § 6120, *et seq.*) which provides that alternate work schedules are substantively negotiable but does not set forth the terms or benefits over which the parties may collectively bargain. Finally, this proposal also conflicts with Article 2 of the CBA.

STUDENT LOAN REPAYMENT PROGRAM- NEW ARTICLE

Section 1

The Employer will administer its Student Loan Repayment Program in accordance with 5 C.F.R. § 537 and other applicable rules and regulations, and subject to the availability of funds. The Program's purpose is to attract or retain highly qualified professional, technical, and administrative individuals by assisting them in repaying their outstanding federally insured student loans. The Employer will tailor the Program to facilitate its recruitment and retention objectives.

There is no entitlement to participation in the Program. Repayment of student loans by the Employer is subject to budgetary considerations and is at the Employer's discretion. Nevertheless, when selecting employees to receive loan repayment benefits, the Employer will adhere to merit system principles and take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in government service. All OPDIVS will participate.

The Parties will create a joint HHS-NTEU committee that will meet at least annually to review the operations of the Agency's program, and to make recommendations to the Employer regarding how the program might be improved. NTEU will be afforded the same number of appointees as the Agency and will make its own appointments.

Section 2

At least twenty (20) percent of the funds allocated to this program in any given fiscal year will be reserved for the grant of student loan benefits to eligible employees in non-professional job series positions.

All nominations made pursuant to this Section must be supported by written justification, which shall refer to the relevant criteria. An employee's supervisor may nominate a particular employee for the Program, otherwise employees may nominate themselves for selection in the Program.

Employees who meet the eligibility requirements in Section 5 may be selected if they meet one or more of the following additional eligibility criteria:

- Contribution to the Agency's Mission - unusually high or unique qualifications contributing to the Agency's mission to protect investors and maintain the integrity of the securities markets;
- Customer Service - providing unusually high or unique quality service to internal and external customers;
- Leadership - unusually high or unique influence or guidance of others in achieving or surpassing the Agency's goals; or
- Teamwork - unusually high or unique efforts to advance team goals towards the Agency's mission, supporting the team and individual team members or supporting organizational units.

Section 3

Each year, the Employer will consider whether it needs to address recruitment and retention issues in a particular job series and/or particular Division/Office/Regional Office(s) through the student loan program. As applicable, the Employer will notify the Union of its intent to offer student loan benefits to all employees within the target group(s), and the reasons therefor.

The Employer will offer a student loan benefit to an employee from the target group(s) who meets the eligibility requirements in Section 5.

Section 4

In addition, and depending on budgetary considerations, the Employer may grant a student loan benefit to any other employee who meets the eligibility requirements in Section 5 as well as one or more of the following eligibility criteria:

- Contribution to the Agency's Mission - unusually high or unique qualifications contributing to the Agency's mission to protect investors and maintain the integrity of the securities markets;
- Customer Service - providing unusually high or unique quality service to internal and external customers;
- Leadership - unusually high or unique influence or guidance of others in achieving or surpassing Agency goals; or
- Teamwork - unusually high or unique efforts to advance team goals towards the Agency's mission, supporting the team and individual team members, or supporting organizational units.

All nominations made pursuant to this Section must be supported by written justification, which shall refer to the relevant criteria. An employee's supervisor may nominate a particular employee for the Program, otherwise employees may nominate themselves for selection in the Program.

Section 5

To be eligible for participation in the Student Loan Repayment Program, an employee must have completed one year of service with the Employer, maintained an acceptable level of performance, and signed a service agreement, in which he/she agrees to:

1. complete three years of service with the Employer which will commence on the date of the first repayment;
2. complete one additional year of service with the Employer for each additional year of repayment received if the loan repayments continue beyond the first twelve months; and

3. reimburse the Employer for loan repayments under such circumstances as set forth in Section 3 below, 5 C.F.R. § 537.109, and other applicable laws, rules and regulations.

Section 6

An employee who receives loan repayments and fails to complete the required service as set forth in Section 2 above because he/she is separated involuntarily for misconduct or unacceptable performance or leaves the Employer voluntarily, will be indebted to the Federal Government and must reimburse the Employer for the total amount of any student loan repayments he/she received, except that:

1. An employee who fails to complete the period of employment established under a service agreement because he/she leaves the Employer voluntarily to enter into the service of another federal agency will not be required to reimburse the Employer for the amount of any student loan repayment benefits he/she received.
2. A right of recovery of an employee's debt may be waived, in whole or in part, if an employee demonstrates to the Employer that recovery would be against equity and good conscience or against the public interest.
3. An employee who fails to complete the period of employment because he/she is involuntarily separated for reasons other than misconduct or performance will not be required to reimburse the Employer.

Section 7

Subject to budgetary considerations, the amount of loan repayment paid by the Employer on behalf of an employee participating in the Program will be up to the maximum yearly limit provided by 5 C.F.R. § 537.106(c) per employee, (less taxes due). Within these limits, the Employer may repay more than one eligible loan for a recipient.

With the exception of the twenty (20) percent of the student loan program budget allocated to employees in non-professional job positions, the Employer will determine how much of the program's budget will be allocated between the classes of eligible employees described in Sections 3 and 4.

If insufficient funds are allocated to the Program for all selected employees to receive the maximum yearly limit or the maximum amount they are eligible for, they will receive all repayment amounts allocated to the Program (including any funds reimbursed to the Employer under Section 6, any undistributed funds from the amount allocated pursuant to Section 2 or 3, or funds made available due to the withdrawal of a participant) on a pro rata basis.

Section 8

An employee participating in the Program will be responsible for making loan repayments on the portion of the loan(s) that continues to be the employee's responsibility. Loan repayments by the Employer will not exempt an employee from

his/her responsibility or liability for any of his/her loans. Student loan repayments made on behalf of an employee are taxable.

The Employer will strive to honor any request made by an employee regarding the form and timing of any tax withholdings, however, the Employer does not have the discretion to make tax payments outside IRS regulations.

Section 9

The Employer will make loan repayments under the Program by direct payment to the holder of the loan on behalf of the employee.

Section 10

No later than March 31 of each year, the Employer will provide NTEU with the following data concerning the student loan repayment program for the prior calendar year in each OpDiv:

1. The total number of requests for student loan repayment, the number of such requests granted, and the number that were denied.
2. The total number of requests for student loan repayment from bargaining unit employees, the number of such requests granted and the number that were denied.
3. The total amount of student loan repayments that were made.
4. The total amount of student loan repayments that were made to bargaining unit employees.
5. Copies of all reports submitted by the Employer to OPM on student loan repayments pursuant to 5 U.S.C. §5379(h)(1).