

# **Labor Management Agreement**

**Between The Federal Election Commission  
And The National Treasury Employees Union**

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**2013 EDITION**

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## PREAMBLE

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The Congress has found that experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them safeguards the public interest, contributes to the effective conduct of public business, and facilitates and encourages the amicable settlement of disputes between employees and their employers concerning conditions of employment and that the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operation of the government. The parties agree that the above described statement of principle, drawn from the *Civil Service Reform Act of 1978*, shall guide the relationship of the parties. **FEC and NTEU are committed to fostering a work environment where employees are treated with dignity and respect.**

# ARTICLE 1

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## COVERAGE AND RECOGNITION

**Section 1:** The Federal Election Commission (hereinafter known as the “FEC,” “Employer,” “Commission,” or “Agency”) recognizes the National Treasury Employees Union (hereinafter known as the “NTEU” or “Union”) as the exclusive representative of the following employees:

All professional and non-professional employees of the Federal Election Commission, including temporary employees, except for the following:

all management officials, confidential employees, employees engaged in Federal personnel work in other than a purely clerical capacity, and Employers as defined in the *Federal Service Labor-Management Relations Statute*.

**Section 2:** When the term "employee" is used in this Agreement, it is expressly understood by the parties that only bargaining unit employees are referred to, unless otherwise specifically stated.

## ARTICLE 2

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### EMPLOYEE RIGHTS

**Section 1:** Each employee shall have the right to form, join, or assist any labor organization or to refrain from any such activity, freely without fear of penalty or reprisal, and each employee shall be protected in the exercise of such rights. Except as otherwise provided in law and this Agreement, such rights include the following:

- A. The right to act for a labor organization in the capacity of representative and the right in that capacity to present the views of the labor organization to heads of agencies or 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.

**Section 2:** Nothing in the Agreement will require an employee to become or remain a member of a labor organization or to pay money to the organization except pursuant to a voluntary written authorization by a member for payment of dues through payroll deductions or by voluntary cash dues payment by the member.

**Section 3:** The initiation of a grievance in good faith by an employee will not adversely affect his/her standing with the Employer, nor shall such an action be construed as an indication of the employee's disloyalty or desirability to the Agency. Employees and Union Stewards shall, pursuant to Title VII of the *Civil Service Reform Act of 1978*, be free from restraint, interference, discrimination, coercion, or reprisal in the exercise of the good faith institution of a matter grievable under this Agreement.

#### **Section 4: Resignation**

- A. Employees have the right to resign at any time. When faced with an Employer-initiated adverse action, an employee may resign prior to the effective date of the adverse action.
- B. An employee may request, in writing, to withdraw a resignation prior to the effective date. Such a request shall be honored unless the Employer has a valid reason and explains that reason to the employee. A valid reason includes for

example, that the Employer has made a commitment to fill the position or made a decision not to fill the position for budget reasons.

- C. A resigning employee is free to state the basis for his/her action, which the Employer shall enter into the record pursuant to the U.S. Office of Personnel Management's Operating Manual, *The Guide to Processing Personnel Actions*, Chapter 31, "Resignations, Terminations, Deaths, and Removals."

## ARTICLE 3

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### UNION RIGHTS

**Section 1:** The National Treasury Employees Union has been accorded exclusive recognition and is the exclusive representative of the employees in the unit it represents. The Union is entitled to act for, and negotiate collective bargaining agreements covering all employees in the unit. NTEU recognizes that it is responsible for representing the interests of all employees in the unit it represents without regard to labor organization membership.

**Section 2:** Formal Meetings.

- A. The Union will be notified of any formal discussion as defined by 5 U.S.C. § 7114(a)(2)(A) between the Employer and employees concerning: (1) any institutional grievance or an individual grievance where the Union represents the employee, or (2) personnel policies and practices affecting the terms and conditions of employment of bargaining unit employees. Absent extenuating circumstances, the Employer shall provide the Chapter President or his/her designee with two (2) workdays notice of any formal discussion that is to be held with a large group of employees and the subject(s) to be discussed. If the issues to be discussed have been listed in a written agenda a copy of the agenda will be forwarded to the Union prior to the meeting.
- B. The Union representative at such meetings will be entitled to participate in the discussion solely to represent the interests of the employees, ask relevant questions, and make a brief statement towards the end of the meeting summarizing the Union's position. It is agreed that the representative cannot use his/her attendance to disrupt the meeting. The Employer reserves the right to summarize and close the meeting. The Union shall have up to thirty (30) minutes following the conclusion of large group meetings to address the employees in private, if space, time and budget permit.

**Section 3:** The Union agrees not to call, or participate in, strikes, work stoppages, or slowdowns in disputes with the Employer.

# ARTICLE 4

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## MANAGEMENT RIGHTS

**Section 1:** In accordance with the *Federal Service Labor-Management Relations Statute* and subject to Section 3 of this Article, the Employer retains the authority:

- A. to determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and
- B. in accordance with applicable laws:
  - 1. to hire, assign, direct, layoff, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or to take other disciplinary action against such employees;
  - 2. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which the Agency's operations shall be conducted;
  - 3. with respect to filling positions, to make selection for appointments, from: a) among properly ranked and certified candidates for promotion; or b) any other appropriate sources; and
  - 4. to take whatever actions may be necessary to carry out the mission of the Agency during emergencies.

**Section 2:** Nothing in this Agreement shall preclude the Agency and the Union from negotiating, at the election of the Agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision work project or tour of duty, or on the technology, methods, and means of performing work.

**Section 3:** Nothing in this Article precludes the parties from negotiating:

- A. procedures which the Employer will observe in exercising any authority under this Article; or
- B. appropriate arrangements for employees adversely affected by the exercise of any authority under this Article.

**Section 4:** In the event the Employer disapproves an executed agreement to the extent allowed by law, the Union shall have the option of re-negotiating such agreement. Such option must be exercised by the Union within twenty-one (21) days of the time when the notice of disapproval is received.

# ARTICLE 5

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## UNION REPRESENTATIVES

**Section 1:** The following Union representatives will be able to utilize Official Time, including Bank Time described below in Article 6:

- A. The Union's Chapter President;
- B. One (1) Chief Steward;
- C. Four (4) to eight (8) Shop Stewards; and
- D. Any alternate Steward designated as acting in the absence of a Steward, pursuant to Section 5(B) of this Article.

This language is not intended to limit the right of other Union representatives to use Official Time as specifically provided in this Agreement, or law, rule or regulation, so long as the Employer is provided one (1) full work day written advance notice, and it is requested pursuant to Article 6, Section 4 of this Agreement.

**Section 2:** Wherever specifically stated elsewhere in this Agreement, the Union is entitled to additional representatives in addition to the Stewards authorized by this Article.

**Section 3:** The employee shall be able to contact his/her designated Union representative in order to seek remedial relief from objectionable personnel policies, practices, conditions of employment, or other similar matters. Official Time shall be requested pursuant to Article 6, Section 4 of this Agreement. Absent a workload problem, the request will be approved. The Union agrees that internal Union business shall not be conducted during work hours, except when the employees concerned are on non-duty time (e.g., annual leave, LWOP, lunch periods).

### **Section 4: Steward Designations**

- A. Appointed Stewards will be designated as follows:

1. The Union shall inform the Employer of the names of the Stewards appointed pursuant to this Article along with any assigned area of responsibility if such designations are made by the chapter.
  2. The Chief Steward will be an at-large representative of all Commission employees.
- B. Alternate Stewards who are appointed will operate within the jurisdiction, if applicable, of the Steward they replace. The Employer shall be notified in writing of such appointments, with the duration of the regular Steward's absence, if known a reasonable period of time in advance of the effective date.

**Section 5:** The Union will notify the Employer in writing upon the selection of a Steward within three (3) work days of their appointment. This notification will also indicate, if applicable, the group of employees under the representational jurisdiction of each Steward. Any changes in Stewards will be reported in the same manner.

# ARTICLE 6

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## OFFICIAL TIME

### Section 1: General

Official Time is the time the President, Chief Steward, Steward, or other authorized representative of the Union spends acting on behalf of the Union to perform the representational duties listed in Section 2 below, for which the President, Chief Steward, Steward, or other authorized representative receives pay from the Employer, and when he is otherwise in a regular duty status.

In accordance with 5 USC 7131(b) official time cannot be used to conduct internal union business, including membership solicitation, union elections, or dues collection activities. Such activities must occur during non-duty hours.

### Section 2: Official Time Bank

Official Time shall be drawn from a bank of 1,000 hours per contract year. The designated bank hours may be used only for the following purposes:

- A. conferring with employees on matters for which remedial relief may be sought under this Agreement;
- B. preparing for grievances, unfair labor practice charges and unit clarification cases;
- C. preparing for replies to proposed disciplinary/adverse actions, unacceptable performance actions, and within-grade withholdings;
- D. preparing for arbitrations, unfair labor practice charges, and appeal hearings, including court proceedings;
- E. preparing witnesses in any proceeding for which official time is authorized;
- F. reviewing documents that are not available during non-duty hours;
- G. Stewards, Chief Steward, and Union Officers attending Union-sponsored training, provided such training is in furtherance of the interests of the government by bettering the labor-management relationship. Written requests

for such time must be submitted at least ten (10) days in advance and include a description of the training;

- H. preparing necessary Department of Labor and Internal Revenue Service reports;
- I. preparing for impact and implementation bargaining;
- J. safety inspections and safety committee meetings, including Occupational Safety and Health Administration-sponsored meetings to which the Agency's safety committee has been invited; and
- K. anytime spent on reasonable and necessary travel in connection with the above;

When a new term agreement is negotiated, an additional 150 hours of official time will be added to this bank to prepare for negotiations and related impasse proceedings. Time spent attending term contract negotiations, or attending impasses proceedings for these negotiations, will not be taken from the official time bank.

### **Section 3: Representational Activities Not Subject to the Official Time Bank**

Each recognized Steward, Chief Steward, Chapter President, or other authorized representative will also receive a reasonable amount of Official Time not charged to the bank for the following labor relations purposes:

- A. performing representational duties during Federal Labor Relations Authority (FLRA) or Federal Service Impasses Panel (FSIP) proceedings, including presenting replies or exceptions or participating as a witness;
- B. being present at "formal discussions" or "investigative interviews" pursuant to Section 7114 of the *Federal Service Labor-Management Relations Statute*;
- C. preparing for and attending joint Labor-Management Relations Committee (or forum) meetings or attending meetings with the Employer, the purpose of which is to discuss personnel policies, practices, and matters affecting general working conditions of employees in the unit or to carry out the goals and objectives of the *Federal Service Labor-Management Relations Statute*;
- D. interviews, testimony and appearances pursuant to written request or subpoena of the Office of the Inspector General, Federal Labor Relations Authority, Merit System Protection Board, Federal Mediation and Conciliation Service, Federal Service Impasses Panel, or similar administrative, judicial, or legislative forum;
- E. preparing replies to proposed terminations of probationary employees;

- F. attendance at term contract, mid-term, or impact and implementation bargaining sessions;
- G. official appearances at grievance/arbitration proceedings as a representative or witness; and
- H. time spent on reasonable and necessary travel in connection with the above.

#### **Section 4: Use and Recording of Official Time**

The parties agree that the use of Official Time under this Article will be subject to the following:

Prior to utilizing official time, a Union representative must request and receive approval of the request from his/her supervisor, or supervisor's designee, to take time away from work to perform Union representation functions, unless such time is expected to be less than 15 minutes.

- A. The representative (President, Chief Steward, Steward, or other authorized representative) will inform his/her Employer of the reason for the request (as listed in Section 2 or Section 3) for Official Time or Bank Time and an estimate of time needed. Time shall be approved absent a workload problem or emergency. Disapprovals will be explained in writing.
- B. Upon returning, the individual will inform the Employer that he/she is returning to duty.
- C. The Employer will be responsible for, and the representative will assist in, maintaining a log of Official Time or bank time.
- D. If more time is needed, the individual will contact the Employer pursuant to Subsection A, above.
- E. If these procedures are abused by an employee and/or a representative, a sign-in/sign-out procedure may be temporarily imposed on a case-by-case basis, not to exceed thirty (30) days. (This does not preclude a charge of Absent Without Leave where appropriate.)

#### **Section 5: Non-Representative Bargaining Unit Employees Use of Official Time**

Employees may use reasonable Official Time for the applicable purposes listed above in Section 2 and Section 3. Employee requests for Official Time shall

comply with Section 4 above, except that upon an initial contact to a Steward, no specification of the purpose of the visit is required.

**Section 6: Unauthorized Use of Official Time**

Normally, Official Time granted under this Article should not be used as a matter of routine. The Union agrees that it should conduct its authorized activities as efficiently as practicable. Unauthorized use of time for labor-management relations purposes may constitute AWOL. The Employer shall make reasonable inquiries as to the nature of the Officer's/Steward's absence before recording a charge of AWOL.

# ARTICLE 7

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## **UNION ACCESS TO EMPLOYER SPACE**

**Section 1: Meeting Space.** The Employer will make available to the Union a room in which meetings of interest to the Union or its membership may be held (e.g., to interview grievants or witnesses), upon a prior request of the Union, subject to the availability of space. Such requests should be made at least forty-eight (48) hours in advance.

**Section 2: Union Elections.** Pursuant to the Union's by-laws, the Employer will provide NTEU with a reasonable amount of space to conduct ballot box elections.

**Section 3: Building Access.** A Union representative who is not an FEC employee will be allowed access to the Employer's premises under agency security procedures applied to all visitors.

**Section 4: Union Office.**

- A. The Employer will make a room available to the Union for use as an office subject to the conditions listed below:
  - 1. Install door lock with only two (2) new keys made; the Employer will retain (1) key in a locked key box. Union will be given a key to the outer door
  - 2. Furnish wall plate with room number and office title.
  - 3. Provide suitable auxiliary lighting and heating.
  - 4. Provide a telephone, a suitable desk, a locking four-drawer filing cabinet and a reasonable number of chairs.
  - 5. The Employer will provide the Union with an all-in-one terminal, when one becomes available, to be placed in the Union office.
- B. It is understood that upon providing such an office, Union officers and

representatives will not conduct meetings, interview grievants or witnesses or confer on labor-relation matters or internal Union business at their own worksites when access to the Union office or other meeting room is available.

# ARTICLE 8

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## UNION RIGHTS TO EMPLOYER SPACE

**Section 1:** The Employer will notify the Chapter President when FEC documents, including bulletins, directives, and updates, that concern conditions of employment (as defined by 5 U.S.C. § 7103(a)(14)) have been posted on the FEC-wide shared drawers or Intranet and also on the agency's electronic document management system, whichever is applicable. FEC documents, including bulletins, directives, and updates that concern conditions of employment (as defined by 5 U.S.C. § 7103(a)(14)) that are not posted on the FEC-wide shared drawer will be provided to the Union in hard copy. In addition, the Employer will provide the Union access to government-wide regulations, guidelines, manuals, and other documents that concern conditions of employment.

Simply making such documents available to the Union does not satisfy the Employer's obligation under 5 U.S.C. § 7114 to give notice to the Union of any changes being made to the terms and conditions of employment of bargaining unit employees prior to such changes being made.

### **Section 2:** Bargaining Unit Report

On a monthly basis, the Employer will transmit electronically to the Chapter President a report which shows the following information for all bargaining unit employees: name, title, grade, assigned division and designation of permanent/temporary status. This Report will be concurrently electronically transmitted to the NTEU National President or NTEU's designee. The Union will safeguard this information and only share it on a "need-to-know" basis.

**Section 3:** The Employer will provide the Union a shared folder on the Employer's NT Server. The Union, through Chapter 204's President or his or her designee, will be the administrator of the shared folder and is responsible for providing "read" access to all bargaining unit employees. The Union will use the shared folder for representational functions only. The Union shall not use the shared folder for internal Union business. The Employer will provide instructions to the President of Chapter 204 or his or her designee regarding the proper procedure for administering the shared folder.

Union representatives who are FEC employees may send emails using the Employer's electronic mail system for representational purposes, including conducting surveys of

bargaining unit employees. The Union recognizes that the electronic mail and computer systems are the property of the Employer; and therefore, all Union representatives will comply with the system usage, information technology security, and privacy rules and policies that the Employer establishes.

#### **Section 4: Use of Commission Mail Service**

- A. The Union has the right to receive and have delivered mail through the Employer's address, provided that the volume of mail does not interfere with the efficient operations of the Employer's mail system.
- B. Mail that is clearly addressed to "NTEU," "Union," or a Union Officer or Steward in his or her Union capacity that the Commission receives through regular postal deliveries, by a commercial service (such as Federal Express, United Parcel Service, or a courier) shall not be opened by any person other than a Union Officer or the addressee. However, if the Commission reasonably concludes that incoming mail for the Union or a Union Official may present a health or safety hazard, the Commission will follow its prescribed procedures, in accordance with U.S. Postal Service, Department of Homeland Security Federal Protective Service and other Federal requirements. The Employer will inform the Chapter President of the incident after appropriate safety procedures have been taken, when practical.

**Section 5:** Union representatives may use the Employer's internal mail/distribution system, at no cost, to send information to specific named individual employees provided that the mail does not interfere with the efficient operation of the Employer's internal mail system.

**Section 6:** The Union has the right to have goods (e.g. office furniture and office supplies) delivered to the 999 E Street building for use in Union business. Deliveries shall comply with the Commission's delivery procedures and shall not interfere with regular Commission business.

#### **Section 7: Use of Photocopying Equipment**

- A. Union representatives may utilize the Employer's designated photocopier(s), at no charge, to copy documents or other material related to the Union's official activities, including its duties in connection with grievances, disciplinary actions, and labor-management negotiations. The Union's use of the photocopier(s) will not interfere with regular Commission business. The photocopier located on the same floor as the Union's office is the designated photocopier for

purposes of this Subsection. If this photocopier is not available, an alternative photocopier will be designated for use in accordance with the following order:

1. the photocopier on the floor where the Chapter President's workstation is located;
  2. if this photocopier is not available, the photocopier on the floor where the Chapter Secretary's workstation is located; and then
  3. if this photocopier is not available, any FEC photocopier.
- B. The Union may copy other materials on the Employer's designated photocopiers if the Union reimburses the Commission at five (5¢) cents per copy, which includes the cost of the paper. The Union's use shall not interfere with regular Commission business. Normally, within twenty-four (24) hours of the Union's use of a photocopier for the copying of other materials, the Union will electronically notify the Director of Human Resources of the number of copies made and the specific photocopier used.

**Section 8:** Employees may use the Commission's telephones (for local calls only), electronic mail system (e-mail), and facsimile transmission equipment (fax) for official labor-management business and communications concerning conditions of employment, at no cost. The Union may not distribute e-mails throughout the Commission (i.e. beyond the bargaining unit) without prior approval from the Director of Human Resources. Employees will comply with the Employer's information technology security, privacy, and internet or computer system usage rules, policies and directives when utilizing any of the services provided under this Article.

**Section 9:** The Employer agrees to list the Union's office telephone number and the name and office telephone numbers of the Union Officers, Chief Steward and Stewards in the Employer's telephone directories (hard copy and electronic). The Union's office location will be listed on the Lobby Board.

**Section 10: Provision of Labor Management Agreement**

- A. The Employer will provide each current employee with a printed and bound copy of this Agreement.
- B. The Employer will provide each new employee with a printed and bound copy of this Agreement within five (5) work days after the date he or she begins working at the Commission.

- C. The bound and printed copies of this Agreement will contain a Table of Contents and an alphabetical topic index. The Employer and the Union will share responsibility for updating the aforementioned index.
- D. The Employer will be responsible for providing copies of this Agreement in alternative formats; for example, in Braille, if requested by a disabled employee.
- E. The Employer will provide will the Union with fifteen (15) extra printed and bound copies of this Agreement.
- F. The Employer will place the Agreement in the FEC-wide shared drawer or Intranet and also on the agency's electronic document management system to make this Agreement accessible to all employees. The Employer will provide the Chapter with both PDF and Microsoft Word versions of this Agreement.

## ARTICLE 9

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### **UNION RIGHTS TO BULLETIN BOARD AND LITERATURE DISTRIBUTION**

**Section 1:** The Employer shall make available to the Union one-third ( $\frac{1}{3}$ ) of existing bulletin board space for its exclusive use, limited to one (1) such bulletin board per floor. The locked board, currently existing on the first floor and used for the posting of vacancy announcements, will continue to be used exclusively for the purpose of the posting of such announcements, and will not be available to the Union.

**Section 2:** The Union may distribute material on the Employer's premises to employees before and after scheduled working hours, or in non-work areas during scheduled work hours, provided that both the employee receiving and the employee distributing such material are on their own time. Non-work areas are the first (1st) floor vending machine room and the main lobby (with advance permission from the building manager). The Union is responsible to assure that litter does not result from its distribution of such literature.

**Section 3:** The Union shall not post nor permit to be posted material which is libelous or slanderous towards any official of the Federal government.

# ARTICLE 10

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## POSITION CLASSIFICATION

### Section 1: Purpose of Position Description

- A. The purpose of a position description is to document the major duties and responsibilities of a position, not to spell out in detail every possible activity during the work day. A position description does not list every duty an employee may be assigned, but reflects those major duties that are regular and recurring.
- B. The Employer agrees that the position description for each position in the unit will accurately reflect the major duties, responsibilities, and the supervisory relationships of a position.
- C. The Employer agrees to classify all positions within forty-five (45) calendar days of assigning employees to do the work of the position.
- D. When the term “such other duties as assigned” or its equivalent is used in a position description, it is mutually understood to mean tasks that are normally related to the position and are of an incidental nature

### Section 2: Classification Standards

- A. The Employer will notify the Union when significant changes are made to the classification of bargaining unit position(s) as a result of a reorganization, a change in duties, a change in classification standards, or a change in the application of classification standards, which results in a change in grade.
- B. The Employer will advise the Union when it receives for comment a draft classification standard for a bargaining unit position from the Office of Personnel Management. The Union may submit its comments regarding such drafts directly to the Office of Personnel Management.

### Section 3: Notification of Changes to Employee Position Description

- A. Prior to issuance of a new or amended position description, the Employer will notify the Union and provide a copy of the proposed position description. The Union will have at least ten (10) workdays to review and provide comments and suggestions to the Employer.

- B. The Employer agrees to review the Union's written comments and suggestions prior to implementing the change or new position description. The Employer will provide the Union with a final copy of the new position description.

**Section 4: Copies of Position Descriptions**

- A. Employees may request, in writing, and will receive a copy of their current position descriptions at any time but no more frequently than once a year, subject to the restriction in Section 1(C) above.
- B. When an employee changes positions, he/she will be provided with a copy of his new position description immediately, subject to the provision of Section 1(C) above.

**Section 5: Position Description Review**

A. Informal Review

1. Employees will be permitted to discuss any disagreement or inaccuracy with his or her supervisor.
2. The Union may also make recommendations regarding the accuracy of a standardized position description where a unit employee's duties significantly differ from the position description. The Employer agrees to review the recommendations of the Union decision and advise the Union of its decision.

B. Formal Review

When disagreements concerning the accuracy of a position description cannot be resolved by the Union and/or employee, and the Employer, the Union or employee may request, in writing, a desk audit from the Office of Human Resources. The Employer's response to the request will be in writing. The employee may have a union representative present during the Office of Human Resources' meeting or desk audit with the employee.

**Section 6: Classification Appeal**

- A. In accordance with 5 CFR Part 511, an employee or representative may file a formal classification appeal to OPM with respect to the appropriate occupational series or grade of the employee's official position.

B. While a classification appeal in connection with a complaint or grievance is processed, the Employer will not reassign duties for the sole purpose of interfering with the appeal process. Management reserves the right, however, to reassign such duties if deemed necessary for other reasons.

## ARTICLE 11

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### **QUALIFICATION REQUIREMENTS**

Copies of qualification requirements for any Commission position will be available to the Union upon request.

# ARTICLE 12

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## PERFORMANCE APPRAISAL SYSTEM

### PART 1 - Performance Standards

**Section 1:** Because written performance standards are a valuable tool in overall productivity enhancement, in evaluating individual employee performance, in protecting the rights of employees, and in establishing effective performance criteria against which other employment considerations can be compared, the Employer agrees to establish written performance requirements for each unit position.

#### **Section 2:** Definitions.

- A. **Performance standards** are the expressed measure of the level of achievement established by management for the duties and responsibilities of a position or group of positions. Performance standards may include, but are not limited to, elements such as quantity, quality, and timeliness.
- B. **Critical element** means a component of an employee's job that is of sufficient importance that performance below the minimum standard established by management requires remedial action and denial of a with-in-grade increase, and may be the basis for removing or reducing the grade level of that employee. Such action may be taken without regard to performance on other components of the job.
- C. **Non-critical element** means a component of an employee's job that is important to overall successful performance, but not essential.
- D. **Midyear Review** – a review of an employee's work based on the supervisor's observation of measurable behaviors related to the critical job elements and performance standards of a position. All employees will receive at least one (1) progress review, if not more, as part of an annual evaluation process, usually about six (6) months before the end of the rating cycle. However, in no case will the Employer use measures of program effectiveness to evaluate or appraise an individual employee.
- E. **Performance Plan** – the document that communicates to the employee what performance is expected in the job and what the employee will be rated against for performance appraisal purposes for the employee's appraisal period. The

performance plan is the assigned performance standards, critical elements and non-critical elements.

**Section 3: Critical Job Elements and Performance Standards**

- A. Each performance standard will be written in a separate and individual manner (although identical performance standard requirements may be utilized for more than one position, if appropriate).

Pursuant to 5 U.S.C. §4302, performance standards must, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the positions in question;

- B. Each performance standard will address, to the extent possible, the quality and quantity of the performance behaviors necessary to achieve the “Outstanding” level of performance, the “Acceptable” level of performance, and the “Minimally Acceptable” level of performance.
- C. To the extent feasible, each performance standard will utilize objective and measurable criteria.
- D. Existing standards shall not be changed except in accordance with the procedures of Section 4 below.
- E. Individual components of multi-part standards are presumed to be of equal weight unless the employee is advised in writing to the contrary.

**Section 4: When new positions are established, or when standards for an existing position are changed, the following procedures apply:**

- A. Draft standards for categories of positions will be provided to the Union prior to implementing final standards. The Union will be permitted ten (10) work days to submit comments regarding the draft standards. Thereafter, the Union’s comments will be reviewed by the Employer, after which the standards shall be finalized and issued to the employee.
- B. During this time frame, one (1) designated Union representative may meet on Official Time with the affected employee(s) to discuss the proposed standards. If more than one employee is involved, the representative shall, whenever practicable, meet with the employees as a group. Such time shall be limited to one (1) hour, such time shall be administered pursuant to Article 6, Section 4. Additional time may be granted if there are reasonable grounds to do so.
- C. Revised job elements will be in effect at least ninety (90) calendar days prior to being utilized as the basis for a performance rating.

- D. A copy of all new/revised standards shall be sent to the Union upon issuance to the employee.

**Section 5:** The Employer agrees that critical elements and standards shall be objective and job-related. While there is no right to grieve a performance standard in and of itself, an employee may grieve application of that standard as part of a grievance filed pursuant to Article 12, Part 2, Section 14 of this Agreement.

**Section 6:** On an annual basis, upon request by either party, two (2) designated representatives for the Employer and the Union shall meet to discuss possible revisions in existing performance standards. The two (2) Union representatives shall be provided reasonable Official Time for these meetings. Any revisions adopted by the Employer must be implemented pursuant to Section 4 of this Article, except, however, that Union representatives shall be permitted five (5) work days to discuss the proposed standards with affected employees and to submit additional employee comments regarding the draft standards.

## **PART 2 - Performance Appraisals**

**Section 1:** All performance appraisals shall be prepared in a reasonable, fair, and objective manner.

**Section 2:** A performance appraisal is a comparison of an employee's performance with performance standards. The purposes of performance appraisals are:

- A. to communicate to employees the Employer's assessment of their performance and to point out to the employee areas where performance has been good and where performance can be improved;
- B. to serve as a basis for career-ladder promotions, or awards, or for remedial actions to be taken by the Employer which will improve employee performance; and/or
- C. to serve as a basis for decisions to grant awards; grant or withhold pay increases (i.e. WGI, QSI); reassign; promote; train; re-train in reduction in force; reduce in grade; or remove.

### **Section 3:**

- A. The appraisal period is the one-year period coinciding with the employee's FEC anniversary date. Any employee serving in a temporary appointment lasting less

than one (1) year will not receive a performance appraisal. Any temporary employee who has an initial appointment lasting beyond one (1) year (or through a series of extensions is employed beyond one year) will receive a performance appraisal.

Employees will receive performance plans within thirty (30) calendar days of the beginning of the rating period, being hired, or entering into a new position, which includes details. A performance plan is a written record of the established critical job elements and performance standards for the employee's position, which addresses a clear linkage between strategic goals of the organization and individual performance.

All aspects of all standards, including numerical standards, procedures, or requirements, referenced in the critical job elements and standards will be communicated to affected employees at the time the employees receive their critical job elements and standards.

- B. It is the responsibility of the Employer to keep the employee informed of the Employer's evaluation of the employee's performance, and to point out to the employee areas of weakness in the employee's performance.

#### **Section 4:**

- A. Performance appraisals are normally prepared by the employee's immediate supervisor.
- B. When employees are reassigned to a different supervisor, the following applies:
  - 1. The former supervisor will provide written comments to the new supervisor regarding the employee's performance. The new supervisor shall consider the information when the evaluation is prepared.
  - 2. With the employee's concurrence, any rating due within ninety (90) days of assignment to the new supervisor is deferred until the employee has completed ninety (90) days under the new supervisor. The existing rating will continue in effect.

#### **Section 5: Documentation.**

- A. Consistent with the *Privacy Act*, documents prepared and relied upon by the Employer in evaluating the employee's performance, including documents having an adverse impact on the employee's next performance appraisal, are available to the employee. The employee must request the documentation within ten (10) business days from the issuance of the performance appraisal.

The Employer will provide this documentation to the employee within ten (10) business days of the request. The time frame specified in Article 47 for filing a related grievance shall not begin until the Employer has provided the requested documentation.

- B. The employee will initial any documentation referenced above in Section 5(A) of this Article, acknowledging only that the Employer has shown such documentation to the employee.

Employees will initial and date a receipt for the critical job elements and standards to show when they were received and discussed with the employee. Initialing does not mean the employee agrees with the Employer-established critical job elements and standards.

- C. The employee may make written comments concerning such documentation which shall be attached to the documentation. Employees will receive a reasonable amount of Official Time to do so, pursuant to applicable provisions of this Agreement.

**Section 6:** The appraisal shall be given to the employee no later than twenty (20) business days after the end of the rating period. A rating may not be deferred unless for reasons found appropriate by both parties.

**Section 7:**

- A. Subject to Section 4 above, where the appraising official has not supervised the employee for at least ninety (90) days, the next line of supervision knowledgeable of the employee's work so as to rate him/her pursuant to Section 1, shall perform the evaluation.
- B. The Union President will be given a list annually, upon request, containing the names of all bargaining unit employees and their anniversary dates.
- C. The Union will file an institutional grievance on behalf of those employees whose appraisals are delayed.

**Section 8:** When the appraising official does not intend to rate an employee on the quality or quantity aspect of any critical job element, the appraising official shall provide written notice to the employee, at least ninety (90) days prior to the end of the rating period, giving the reasons why that critical job element will not be rated. If, after notice has been given, the circumstances change so that the employee will be rated on that critical element, the Employer will notify the employee as soon as possible.

When an employee is not rated on a critical element (e.g., because the employee's performance could not be measured or observed in that area) he/she will receive a "not applicable" rating for that element.

**Section 9:**

A. Employees will be appraised on the negotiated appraisal form, Appendix I, based on the job elements and standards previously provided to the employee.

B. The "Quantity" and "Quality" factors may be described as follows:

QUANTITY - As to that particular job element, did the employee perform a greater or lesser amount than what is normally expected of, and made known to, an employee in order to achieve an acceptable performance rating.

QUALITY - As to that particular job element, was the employee's performance more accurate and thorough or less accurate and thorough than what is normally expected of, and made known to, an employee in order to achieve an acceptable performance rating.

C. Although specific comments are not required for element ratings of "3," supervisors are encouraged to provide adequate feedback to employees, including ways to attain higher levels of performance and recommended training.

**Section 10:**

A. The Employer has decided to evaluate the employee by assigning a numerical score to each element according to the following scale:

1. Outstanding – 5
2. Exceeds Requirements – 4
3. Acceptable – 3
4. Minimally Acceptable – 2
5. Unacceptable - 1

B. The overall rating shall be determined by taking the numeric score for each job element rated, adding them together, and then dividing the total by the number of elements rated. Based on that numeric average, the overall rating shall be assigned as follows:

OUTSTANDING - numeric average greater than 4.70 with all critical elements rated Outstanding.

EXCEEDS REQUIREMENTS - numeric average between 4.00 and 4.69 (inclusive)

ACCEPTABLE - numeric average between 3.00 and 3.99 (inclusive)

MINIMALLY ACCEPTABLE - numeric average between 2.00 and 2.99, with no critical elements rated "Unacceptable."

UNACCEPTABLE - One or more critical elements are rated "Unacceptable." An unacceptable summary rating must be preceded by an advance written notice which identifies the critical elements for which performance is unacceptable, citing examples of such performance, and explaining, to the extent possible, what must be done to bring performance up to a "Minimally Acceptable" level and what efforts will be made by the Employer to assist the employee in improving his/her performance.

This advance notice will be given to the employee a reasonable period of time in advance, (but in no case less than sixty (60) days absent exigent circumstances) of assigning the unacceptable rating. This period of time is referred to as the "opportunity period."

The notice will state that if the employee's performance improves above the Unacceptable level, and continues at that level for one (1) year from the date of the advance notice, the employee's record shall be expunged of any reference to the unacceptable performance.

## **Section 11: Mid-year Review**

- A. Supervisors shall conduct formal and informal performance progress reviews throughout the annual performance appraisal period. Employees will receive at least one (1) progress review as part of an annual evaluation process approximately six (6) months before the end of the rating cycle.
- B. Progress reviews are not ratings and therefore, the content cannot be grieved.

## **Section 12: Issuance.**

- A. Performance appraisals will be presented to an employee for discussion purposes. Also, performance requirements for the upcoming appraisal period shall be discussed and clarified at that time, if necessary. Employees are encouraged to add their written comments to the performance appraisal, and will

receive reasonable Official Time to do so. Employees wishing to add such comments shall have five (5) work days from the date of the issuance of the appraisal, i.e., the normal due date, to add to their written comments to the appraisal. Any comments made at that time shall become a part of the permanent appraisal and considered. However, in the event that the employee has requested the supporting documentation used to support the final rating, the five (5) workdays will not begin until the supporting documentation is provided to the employee or the authorized requesting party.

- B. The effective date of the appraisal will be the date after the appraisal is issued to the employee by the rating official.

**Section 13:** The rating official must sign and date the employee's performance appraisal on the date of issuance. Employees are required to sign a performance appraisal upon issuance to the employee by the rating official. The employee's signature on the appraisal indicates only that the employee has reviewed the appraisal with the rating official and has received the copy. If the employee refuses to sign, it shall be so noted on the appraisal by the rating official.

**Section 14:** Disputes.

- A. Except as provided in Article 16, Section 2 of this Agreement involving Reduction-in-Force situations, notice of the decision to invoke arbitration over any such grievance(s) must be served on the Employer by the Union within twenty (20) calendar days of the date an appraisal has been used in an action taken by the Employer, when the action is substantially complete, and the employee has been damaged by the appraisal.
- B. A performance appraisal may only be challenged once through the grievance/arbitration procedure.

**Section 15:** Pursuant to 5 C.F.R. § 430.208(i), a performance appraisal rating of record may be changed:

- A. within sixty (60) days of issuance, based upon an informal request by the employee;
- B. as a result of a grievance, complaint, or other formal proceeding permitted by law or regulation that results in a final determination by appropriate authority that the rating of record must be changed, or as part of a bona fide settlement of a formal proceeding; or
- C. where the Commission determines that a rating of record was incorrectly recorded or calculated.

**Section 16:** Negotiations for New or Revised Performance Systems

For any new or revised performance system proposed by the Employer, the Union will be afforded the opportunity to negotiate in accordance with law and regulation.

**Section 17:** Within eighteen (18) months of the effective date of this Agreement, either party may open this article for midterm negotiations. This will be in addition to the three (3) articles that the parties can reopen for midterm reopener negotiations. It is understood by the parties that this Section will only apply to the midterm reopener for this contract edition, and that for subsequent contracts the parties will revert back to the three (3) article limit provided in Article 60 Section 3.

# ARTICLE 13

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## PROMOTIONS & APPOINTMENTS

### Section 1: Purpose

The purpose of this Article is to ensure that all competitive promotions to bargaining unit positions and certain other placement actions to bargaining unit positions, as set out in the coverage and exclusions of Section 2 of this Article, are made on a merit basis by means of systematic, fair, and equitable procedures. To that end, the Employer and Union agree to the following procedures.

### Section 2: Scope

A. It is understood that this Article applies to the following actions:

1. filling a vacant position by promotion or appointment;
2. filling a position with known promotion potential by transfer, reinstatement, or demotion;
3. filling of positions by transfer or reinstatement, or voluntary demotion of a higher grade or higher known promotion potential than the candidate's last position, except as provided below in Section B.5;
4. details for more than 120 days to higher graded positions or to a position with higher promotion potential;
5. temporary promotions for more than sixty (60) days; and
6. selection of employees for training that is given primarily to prepare trainees for advancement and that is required for promotion which is covered by 5 CFR 335.103(c)(1)(iii).

B. It is understood that this Article does not apply to:

1. promotions up to and including GS-13 which are part of an established career ladder program, except as stated in Section 14 of this Article;
2. promotions which result from an unplanned accretion of duties;

3. promotions which result from the exercise of re-promotion eligibility rights, or priority consideration based on a prior determination of improper consideration for a prior vacancy;
4. temporary appointments not to exceed six (6) months.
5. filling a vacant position by transfer, reinstatement or voluntary demotion when the position is of no higher grade or promotion potential than the candidate has held.

### **Section 3: Vacancy Announcements**

A. In its search for qualified applicants, the Employer will post a vacancy announcement for at least ten (10) work days which shall remain open for that period and shall contain the following information:

1. title, series, and grade of the position;
2. organizational location of the position;
3. opening and closing dates of the announcement;
4. the minimum qualifications required for the position;
5. any selective placement factors (e.g., special considerations relating to the handicapped);
6. any other special qualifications which may be used in the selection process;
7. a summary of the duties of the position;
8. a vacancy announcement identification number;
9. a statement as to whether the vacancy announcement will be restricted to FEC employees or open to external candidates;
10. procedures and forms required for applying;
11. location of office to which applications should be sent;
12. an appropriate statement on equal employment opportunity;
13. promotion potential (if any);
14. significant working conditions;

15. statement of evaluation methods to be used; and

16. the job crediting element plan.

- B. All employees will be provided a copy of the vacancy announcement electronically. The Union will be provided one (1) copy of each vacancy announcement simultaneous with the posting of the announcement in the bargaining unit area.
- C. Notifications of the cancellation of any vacancy announcement must be posted in the same manner as a vacancy announcement.
- D. The requirement that a vacancy announcement be posted for a minimum of ten (10) work days shall be modified to a minimum of three (3) work days where management seeks to fill an identical position to one previously announced but not yet filled.
- E. A copy of the reposting or cancellation notice will be posted in those locations where the vacancy was announced.

#### **Section 4: Forwarding Applications to the Selecting Official**

When the Employer decides to fill a position through competitive promotion procedures:

- A. All complete applications of qualified individuals, internal and external, received in a timely manner, will be forwarded on for ranking. After ranking, a best qualified list will be established. If three (3) or more internal applicants have applied for the position and any make the best qualified list, the selecting official will first be given a list of the best qualified internal applicants for consideration. If the selecting official requests it, a second list of external applicants will be forwarded after the first.
- B. Temporary employees appointed pursuant to Section 2(B)(4) above shall be considered external applicants for the purposes of Section 4(A) above.
- C. Nothing in this Article shall be construed to interfere with the FEC's obligation to comply with legally mandated affirmative action goals to achieve a balanced workforce from all segments of society.

#### **Section 5: Application for Competitive Promotion or Appointment**

- A. It is agreed that any candidate that wishes to be considered for an announced vacancy must personally apply by submitting an application. No automatic consideration will be granted, unless:
1. the candidate is temporarily absent on military service, for service with public international organizations (if they have reemployment rights), or as a result of compensable job-related injuries; or
  2. the candidate is temporarily absent on approved leave of more than five (5) work days, on detail, or at training courses, and has advised the Office of Human Resources that he/she wishes to be considered for vacancies announced under this Article during his/her absence by submitting an application for such vacancies.
- B. Applications received in the Office of Human Resources of the Employer will not be considered if they are received before the opening date or after the closing date stated on the vacancy announcement, except as provided in Section 5.A. of this Article. The Office of Human Resources shall date stamp applications upon receipt. This does not preclude the Employer from maintaining on file applications for individuals who may qualify for noncompetitive appointment to bargaining unit positions.

#### **Section 6: Other Employer Recruitment Commitments**

- A. 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 the required narrative justification will be made available to the Union upon request.
- B. The Employer agrees that significant working conditions 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 justified in writing with a copy of such going to the file and to the Union.

#### **Section 7: Performance Appraisals in the Application Process**

It is agreed that for vacancies covered by this Article the candidate's current performance appraisal will be used. It is the applicant's responsibility to provide a copy of his/her current appraisal with the application.

## **Section 8: Rating Panel**

- A. When there are four (4) or more qualified employee applicants for a bargaining unit position with a full performance level of GS-9 or above, the Employer shall designate a rating panel. When there are fewer than four (4) eligible applicants, or the position to be filled is below the GS-9 level, rating panels will be used only at the request of the selecting official.
- B. When panels are not used, a ranking official will evaluate the candidates. The ranking official shall not be the selecting official for that action.
- C. Rating panels will be selected by the Employer, and consist of at least three (3) voting members who will normally be non-unit employees unless the following criteria cannot be met using a non-unit employee. They should be specialists in the subject matter of the position being filled and will be at the same (or higher) grade level of the vacancy to be filled. Notice will be provided to the Union when the Employer intends to have a bargaining unit employee serve on a panel.
- D. All candidates for a position shall be evaluated by rating panels having the same number of voting members, and the full panel (*i.e.*, all voting members) shall vote on the rating. If a member of a rating panel is unavailable, an alternate member shall be appointed to the rating panel to insure that the overall number of persons rating each candidate is the same.

## **Section 9: Candidate Rating and Ranking**

- A. The rating panel (or rating official) will evaluate each qualified candidate based on the SF-171 or similar job application materials (e.g., resumes, other application forms), current appraisal, and any other information required by the announcement. The rating and ranking practices relayed in this Section, including the crediting plans and ranking formulas and factors, must conform to the job analysis requirements of 5 CFR 300.103.
  - 1. Permanent job element crediting plans for all positions will be developed by the Employer the first time a position is filled after the performance requirement document is effective. Before that the Employer will establish interim job element crediting plans the first time it fills the position and will not change that plan until the permanent plan is established.
  - 2. The plan will provide for a systematic and equitable distribution of points.
  - 3. The Union will receive one (1) copy of any interim or permanent plan at least five (5) work days prior to use.

4. Each element will be written in a separate and individual manner, and to the extent the Employer determines, such elements will reflect the written performance requirements of the position to be filled.
- B. The rating panel (or if applicable, the rating official) shall rank the eligible candidates by the following formula:
1. Job elements on the crediting plan (potential exhibited by the candidate to perform critical elements of the job): (0-45 points\*)
  2. Current performance appraisal: (0-30 points)
  3. Awards: (10 points)
  4. Additional experience, training & education (0-15 points)
  5. Writing samples, if used (0-25 points;\* item (1) drops to 20 points)
- C. The factors described in paragraph (B) shall be derived as follows:
1. Each job element on the crediting plan shall carry a point value in the range of one (1) to five (5). The average of the scores on the job elements shall then be multiplied by nine (9) to determine the overall score for this part.
  2. The current performance appraisal shall be used in taking the overall numeric average (see Article 12, Part 2, Section 10 of this Agreement) and multiplying this average by six (6). Non-FEC applicants, or FEC employees who are without a performance appraisal, shall be given two-thirds ( $\frac{2}{3}$ ) of the score received in paragraph 1, above.
  3. Employees will be awarded points for relevant awards related to the position being filled in accordance with the following scale:
    - a. Commendations or Honorary Awards (2 to 4 points)
    - b. Special Achievement (4 to 6 points)
    - c. Sustained Superior Performance (6-8 points)
    - d. Quality Step Increase (8-10 points)

If the Employer determines that an award listed above is not related to the position being filled, the Employer will notify the employee in writing of the reasons for the determination.
  4. Employees will receive points for pertinent experience and training as follows:

- a. Additional job-related education. (In excess of basic job qualification standards. May be used only when additional education is directly related to the duties of the position.) 0 – 5 points
  - b. Additional job-related experience. (In excess of the job qualification standards. Points may only be given when the added experience demonstrates a higher level ability to do the duties of the position.) 0 – 5 points
  - c. Training (relating to vacancy). The evaluator will assign points for such training based on duration and recency, up to two (2) points per course, to a maximum of five (5) points.
5. Employees will be awarded points for essays which they take in connection with the requirements for the position as follows: when essays are to be used in an action covered by this Article, the Employer will develop objective criteria for awarding points equating the essay score scales to a scale of zero (0) to twenty-five (25). These criteria will be developed before the essay is given and shown to the Union for its comment.

#### D. Best-Qualified List

1. The Best-Qualified List will consist of the three (3) top-ranked candidates. In cases where there is no meaningful mathematical difference between the third-ranked candidate and lower-ranked candidates, additional candidates may be added to the Best-Qualified List up to the point of a meaningful mathematical break.
2. One (1) additional name shall be added to the Best-Qualified List for each additional vacancy.
3. This List, together with the SF-171s, shall be submitted to the selecting official for consideration, with the names listed in alphabetical order.

### **Section 10: Selection Procedures**

- A. The selecting official may select any Best-Qualified candidate, or decide not to select any. If the selecting official chooses to interview any of the Best-Qualified candidates, all in that group must be interviewed, if available. The selecting official shall forward his/her selection(s), if any, through the Office of Human Resources to the Staff Director for appropriate action.

- B. The selection of a candidate for the vacancy shall be made, if possible, within fifteen (15) days from time the Best-Qualified List is forwarded to the selecting official.
- C. Individuals found not to be basically qualified shall normally be notified prior to deliberation by the panel or ranking official.
- D. After a selection has been made, all applicants will be notified of the selection, and shall be informed as to whether they were among the Best-Qualified candidates. The name of the selectee will be announced only after final appointment.

### **Section 11: Consideration of Leave in Selections**

An employee's accumulation or balance of annual or sick leave may not be considered by the rating panel, rating officials, or selecting officials, as a basis for selection or non-selection. However, this does not preclude the consideration of leave balances if there is an abuse of leave or a resultant effect on the employee's dependability or work performance.

### **Section 12: Effective Date of Promotion**

An employee who has been selected for a promotion will have his/her promotion become effective no later than one (1) complete pay period following his/her selection or the date the position is vacated if the selection was made in advance of the position being available.

### **Section 13: Non-Selection Entitlements**

- A. Employees identified by the Employer as ineligible for a vacancy are entitled to career guidance from the Office of Human Resources. This guidance will contain, at a minimum, a description of the minimum qualification requirements for the positions which the employee desires and an analysis of the employee's current qualifications as they relate to higher level positions the employee could reasonably be expected to fill within the next year.
- B. Further, upon written request to the Office of Human Resources, an employee applicant will be provided the following information about a position announced under this Article if he/she had applied in a timely manner:
  - 1. whether legally eligible and, if not, why not;
  - 2. whether considered by the rating panel (or ranking official) and if not, why not;

3. whether referred on the Best-Qualified List, and if not, why not;
4. name of the selectee under this vacancy announcement; and
5. answers to any questions reasonably related to the employee's ability to be promoted to that specific position the next time it is announced.

#### **Section 14: Priority Consideration for Vacancies**

If, as the result of a grievance being filed under this Agreement, either the Employer agrees or an arbitrator decides that an employee was erroneously omitted from the Best-Qualified List, he/she will receive priority consideration for the next like vacancy. Priority consideration consists of the submission of that employee's name alone on a certificate to the selecting official before taking any other action to fill the vacancy. Non-selection of a priority candidate must be documented by written, valid reasons. In the event that two (2) or more employees are entitled to priority consideration for the same vacancy, the names of all such employees shall be submitted on a single promotion certificate to the selecting official.

#### **Section 15: Career Ladder Promotions**

- A. A career ladder promotion is the non-competitive promotion of an employee through intervening grade levels to the full performance level in an established career ladder if he/she is one of a group in which all employees are given grade building experience.
- B. Career ladder promotions are not automatic at the end of the time-in-grade period. Whenever practicable, however, an employee shall be promoted effective the first (1<sup>st</sup>) pay period after all the following conditions are met:
  1. work at a higher grade exists;
  2. the individual has demonstrated the ability to perform at the next higher level;
  3. budget considerations permit; and
  4. time-in-grade requirements are met.
- C. Time-in-Grade
  1. Minimum requirements are as follows:

- a. twenty-six (26) weeks in current grade to be promoted up to and including GS-5;
- b. fifty-two (52) weeks in the next lower grade of the position to be promoted above GS-5; or
- c. seventy-eight (78) weeks at the Attorney, GS-13 grade level to meet the time-in-grade requirement for the GS-14 Attorney level.

## 2. Creditable Service

All service at the required or higher grade in the Federal civilian service will count in full towards the time periods specified above in Subsection C.1.

## D. Notice of Disqualification for Promotion

1. The Employer shall provide an advance written notice at least ninety (90) days prior to the employee satisfying the time-in-grade requirement to any employee whose performance is not considered sufficient to justify a career ladder promotion. The notice shall identify those aspects of performance considered to be deficient and provide appropriate remedial advice. The purpose of this notice is to provide the employee with a meaningful opportunity to improve performance deficiencies so as to demonstrate the ability to do higher graded work. If the supervisor fails to send a notice by the ninetieth day, the Employer shall have an additional two-week (14 calendar days) grace period to issue the notice.
2. Failure to receive the above notice provides the employee with a reasonable assurance of promotion assuming that the employee continues to demonstrate the ability to perform at the next higher level and the other requirements of this Section are met.
3. If during the last ninety (90) days the Employer determines that the employee's performance no longer demonstrates the ability to perform at the next higher level, the employee shall promptly be issued the above notice.

## **Section 16: Investigations**

The fact that an employee is the subject of a conduct investigation will not prevent or delay his/her promotion or proper consideration for promotion, unless it is necessary to protect the integrity of the Employer, or the action would compromise the non-partisan character of the Agency.

**Section 17: Demotions in Career Ladder Positions**

If an employee is promoted and subsequently within a year is demoted for inability to perform at a higher level, the Employer agrees to make reasonable efforts to return the employee to his/her former or a like position as soon as is practical.

**Section 18: Recordkeeping**

The Employer will maintain promotion and selection files for two (2) years in accordance with higher level regulations.

**Section 19: Information Requests**

Upon request, the Union shall be provided with the following information: (a) announcement number; (b) job title & grade; (c) name of selectee(s); (d) name of nominating official and panel members (or ranking official); and (e) a copy of completed job element crediting plans for the applicants.

**Section 20: Promotion Grievances**

In the processing of grievances related to actions taken under the terms of this Article, the grieving employee or his/her steward will, upon request, be furnished the relevant, necessary evaluative material used by the promotion committee, immediate supervisor, or selecting official in assessing the qualifications of the eligible candidates in regard to a grieved promotion action subject to the following criteria and conditions: the aforementioned information may be sanitized to protect the individual's right to privacy.

# ARTICLE 14

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## DETAILS

### Section 1: General

- A. A detail is a temporary assignment of a bargaining unit employee to different duties and responsibilities for a specified period, with the employee returning to his or her position of record or if unavailable, to a similar position (i.e. same title, occupational series, grade, and pay) at the end of the detail. During a detail, the employee's official position of record, salary and grade remain the same.
- B. Details may be to positions or duties at, below, or above the employee's current grade level. A detailed employee need not meet any qualification requirements of the position to which he/she is detailed. Officially, the employee continues to hold the position from which detailed and keeps the same status.
- B. Details are limited to a maximum initial period of 120 days, plus one (1) extension for a maximum period of 120 additional days.
- C. Details will not be used to give employees an unfair unlawful advantage in the merit promotion process.
- D. This Article will apply to bargaining unit employees in details within the bargaining unit.

### Section 2: Details to Higher Grade Positions

- A. The Employer agrees that a bargaining unit employee who is detailed to a position of higher grade will be temporarily promoted and will receive the rate of pay for the position to which they are temporarily promoted provided the employee meets the minimum qualifications under law and regulation, and is performing the duties of the higher graded position. Such promotion will be effective the first day of the detail if the detail begins on the first day of the pay period. To the extent possible, details will begin on the first day of the pay period and end on the last day of the pay period.
- B. The Employer will not rotate assignments to employees solely to avoid compensation at the higher level. Detail opportunities that enhance opportunities for promotion and that are expected to exceed thirty (30) days, if not filled competitively, will be posted in appropriate locations for at least five (5) full

workdays, absent extenuating circumstances. The posting will describe the assignment and list the qualification factors to be used by the Employer in making the selection. If more than one (1) qualified employee applies (by memo; job application not required), the most senior applicant will be selected. If no employee volunteers, the least senior qualified employee will be assigned. The Employer reserves the right to consider applicants' workload when making the selection.

- C. The Employer will determine which applicant(s) to detail based on factors (e.g., qualifications, particular skills, team compatibility, continuity of assignments, employee workload, efficiency of the service).
- D. The Employer will give employees at least ten (10) work days of advance notice of a detail assignment, absent extenuating circumstances.
- E. It is agreed that when an employee is detailed to a higher grade position for more than thirty (30) days, but is not eligible for a temporary promotion, the employee's performance at an acceptable level in the higher-grade position may be cause for issuance of a Special Achievement Award. The amount of the Award will be determined in accordance with the Sustained Superior performance provisions of Article 18, Section 3.B. of this Agreement. Such detail will also be documented by an SF-52 in the employee's Official Personnel Folder.

### **Section 3: Return to Detail**

Employees returning from a detail will be given a reasonable amount of work time (but in no case more than one (1) work day) to re-familiarize themselves with the position's requirements, especially any changes in operating procedures that may have occurred.

### **Section 4: Employee Responsibilities**

Employees who are on formally documented details will be relieved of responsibility by the Employer for work then assigned, provided such work is not encompassed by the detail. The foregoing relief of responsibility will be based on the detailee's written list of those cases, identifying the actions therein that need attention. The Employer agrees that notification of the detail shall be timely and the detailee shall be provided with sufficient time to prepare such a list.

The relief of responsibility shall terminate with the employee's reassignment to his/her position.

**Section 5: Details Exceeding 30 Days**

Details exceeding thirty (30) days shall be documented in writing and a copy will be sent to the Union's Chapter President.

# ARTICLE 15

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## CHANGES IN TEAM ASSIGNMENTS AND REASSIGNMENTS

**Section 1:** For the purposes of this Article only:

- A. A change in team assignments refers generally to a permanent change from one work unit to another unit within the same Office/Division/Branch at the same grade level and performing similar duties.
- B. A reassignment refers to a permanent change from one work unit to another unit at the same grade level but involving significantly different duties.

**Section 2:** Employees may be assigned to different teams or reassigned to make the best use of employee skills, to correct workforce imbalances, to correct performance or conduct problems, or for other reasons. The procedures in this Article apply only to moves of groups of employees to correct staffing imbalances or to improve distribution of employee skills among work units. These procedures do not apply to the move of an individual employee from one team to another, or to the reassignment of an individual employee, for other reasons. In such cases, the Employer agrees to give the employee who is going to be reassigned written notice ten (10) days prior to the new assignment, if practicable.

**Section 3:** Where the Employer proposes to change team assignments or to reassign a bargaining unit employee(s), the Employer will provide the Union with notice of its intention to change team assignment or reassign, if required by law. If formal notice of the change is not required by law, the Employer will provide a courtesy notice to the Union of such changes to team assignments or reassignments.

### **Section 4:** Voluntary Team Assignments/Reassignments

When the Employer determines that a change in team assignments or a reassignment of a number of employees under the provisions of this Article is necessary, and merit promotion procedures do not apply, the Employer will follow these procedures:

- A. The Employer will identify the positions from which and to which employees are to be moved.
- B. The Employer will solicit volunteers for the moves.
- C. Employees will be given a reasonable amount of time to volunteer and express any preferences that they may have.

- D. The Employer will determine which employees to assign to which positions based on factors such as qualifications, particular skills, team compatibility, continuity of assignments, and any other objective or subjective job-related factors that the Employer deems appropriate.
- E. If the Employer at any point determines that the number of volunteers who are equally qualified with respect to all job-related factors for the available positions exceeds the number of available positions, the Employer will select employees based on FEC seniority (i.e., FEC most recent entry on duty date).

**Section 5: Involuntary Team Assignments/Reassignments**

If the number of suitable volunteers under Section 4, above, is or becomes insufficient to meet the needs, the Employer will follow these procedures:

- A. The Employer will determine which remaining employees to move to which positions based on the factors listed in Section 4(D) above.
- B. If the Employer at any point determines that the remaining employees are equally qualified with respect to all job-related factors for the positions being filled, the Employer will select employees based on inverse seniority.

**Section 6:** The Employer's determination as to which employees will move to which positions under this Article will be announced in writing.

**Section 7:** Employees who must physically relocate as a result of a move under the procedures detailed in this Article will be allowed a reasonable amount of time to pack and unpack their belongings during duty time.

**Section 8:** Employees who are physically relocated as a result of a move under the procedures detailed in this Article will be assigned office space under the agreements or practices in existence at the work unit into which they are being moved.

**Section 9:** Where the involuntary change in team assignment or reassignment of an employee under the procedures detailed in this Article would cause a hardship to the employee that could be remedied by a temporary Flexiplace arrangement, the employee may request such an arrangement. The Employer may permit such a temporary arrangement contingent on there being no additional costs to the Employer or adverse impact on the work.

**Section 10:** For all unanticipated situations related to team assignments or reassignments that are not specifically covered by this Article, the Employer will provide appropriate notice to the Union to the extent required by law.

# ARTICLE 16

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## REDUCTION-IN-FORCE

**Section 1:** The Employer shall give advance written notice to the Union of any reduction-in-force in the bargaining unit pursuant to Article 45 of this Agreement. And, the Employer shall bargain upon request over the impact and implementation thereof.

### **Section 2:** Disputes

- A. The Union has seven (7) calendar days of receipt of the notice referenced in Section 1, above, to invoke arbitration over any previously-filed grievance involving an employee's performance appraisal.
- B. Arbitration may be invoked only where there is a reasonable likelihood that the remedy, if granted, would result in an increase in the grievant's retention standing.
- C. If arbitration is invoked, the parties shall utilize the expedited procedures of Article 48, Section 6 of this Agreement. The parties agree that, in selecting an arbitrator from the list, if a mutually acceptable hearing date cannot be arranged within ten (10) days, the parties shall move to the next name on the list and/or take whatever steps necessary to expedite the proceedings.
- D. Grievances concerning Performance Appraisals

In instances where an employee is issued an appraisal after the Union has been given notice of a Reduction-in-Force, any grievance over that appraisal must be filed at the Third (3rd) Step, with the deadline to invoke arbitration three (3) days following issuance of a decision by the Staff Director. The parties agree to take reasonable steps to otherwise expedite the processing of such cases.

Any grievance over performance appraisals which is pending below the Third (3rd) Step at the time of the aforementioned notice shall be immediately transferred to the Third (3rd) Step. The deadline to invoke arbitration shall be three (3) days after receiving the Staff Director's decision.

# ARTICLE 17

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## ACCEPTABLE LEVEL OF COMPETENCE

### Section 1:

- A. Within-grade increases are based on the ratings of the critical job elements and are granted to employees who clearly meet the performance standards.
- B. A within-grade increase will be granted only when:
  - 1. employee performs at an acceptable level of competence (i.e., receives at least a score of 3.0 summary rating on his/her most recent performance appraisal);
  - 2. employee has not received an “equivalent increase” in pay (as defined by 5 CFR 531.407) during the waiting period; and
  - 3. employee completes the required waiting period for advancement to the next step within his/her grade. The waiting period of advancement to the following steps of each grade are:
    - Steps 2, 3, 4 - 52 weeks of creditable service;
    - Steps 5, 6, 7 - 104 weeks of creditable service;
    - Steps 8, 9, 10 - 156 weeks of creditable service
- C. An acceptable level of competence is not synonymous with a minimally acceptable performance rating. For example, an employee may receive a minimally acceptable performance rating, yet not have performed at an acceptable level of competence warranting approval of the employee's within-grade increase.

**Section 2:** At least sixty (60) days prior to the date that an employee is eligible to receive a within-grade increase, the employee's supervisor will review the employee's performance. If the supervisor concludes that the employee's performance has not been at an acceptable level of competence, the supervisor will notify the employee in writing within a reasonable period of time, but never less than sixty (60) days before the employee will have completed the required waiting period. However, if a significant performance issue arises subsequent to the sixty (60) day period, the Employer will

provide the employee with notice as soon as possible. Generally, the notice will address include the following:

- A. Identification of the critical job element(s) in which the employee's work performance is at less than an acceptable level of competence;
- B. Explanation of how the employee's work performance is at less than an acceptable level of competence, including examples of work performance that was below the acceptable level;
- C. Examples of work performance that would be at an acceptable level of competence with respect to each identified critical job element (in quantitative or qualitative terms, as applicable);
- D. Specific steps that can be taken to help the employee improve job performance (e.g. setting specific project goals or standards, peer review of work, retraining assignments); and
- E. A statement that if the employee's work performance does not improve to an acceptable level, as described in the notice, the employee will not receive a within grade increase.

**Section 3:** If the Employer determines at the end of the waiting period that the employee's performance is at an acceptable level for purposes of approving the within-grade increase, any notice issued pursuant to Section 2 above will be cancelled. If the Employer determines that an employee's performance is not at an acceptable level for the purpose of approving the within-grade increase, the Employer will notify the employee in writing that the within-grade increase will be denied. This notice will include a statement of the following:

- A. The employee's performance has been determined not to be at an acceptable level of competence;
- B. All instances, specifically described, of the employee's work performance that form the basis of the determination;
- C. The employee's right to have a decision reconsidered, to whom the request should be made, and the time limit (15 working days) in which the employee may make such a request;
- D. That failure to improve his/her performance to an acceptable level of competence may be cause for the Employer to initiate the employee's removal, demotion, or reassignment;
- E. That if the Employer determines that the employee is performing at an acceptable level of competence, the within-grade increase can be approved at any time; and

- F. That in any event, a new determination will be made no later than fifty-two (52) weeks after the date of the original determination.

#### **Section 4: Delays**

- A. In accordance with 5 CFR 531.409, an acceptable level of competence determination shall be delayed when, and only when, either of the following applies:
  - 1. An employee has not had the minimum period (i.e., 90 days) of time to demonstrate acceptable performance because he/she has not been informed of the specific requirements for performance at an acceptable level of competence in his/her position, and the employee has not been given a performance rating in any position within ninety (90) days before the end of the waiting period; or
  - 2. An employee is reduced in grade because of unacceptable performance to a position in which he/she is eligible for a within-grade increase or will become eligible within the minimum period (i.e., 90 days).
- B. When an acceptable level of competence determination has been delayed for the reasons described above in Section 4(A):
  - 1. The employee shall be informed that his/her determination is postponed and the appraisal period extended and shall be told the specific requirements for performance at an acceptable level of competence.
  - 2. An acceptable level of competence determination shall then be made based on the employee's rating of record completed at the end of the extended appraisal period.
  - 3. If, following the delay, the employee's performance is determined to be at an acceptable level of competence, the within-grade increase will be granted retroactively to the beginning of the pay period following completion of the applicable waiting period.

#### **Section 5: Reconsideration**

- A. Pursuant to 5 U.S.C. 5335(c), when the Employer issues a negative determination, an employee or an employee's personal representative may request reconsideration of the negative determination by filing, not more than fifteen (15) days after receiving the notice of determination, a written response to the negative determination setting forth the reasons for reconsideration of the determination.

- B. An employee in a duty status shall be granted a reasonable amount of official time to review the material relied upon to support the negative determination and to prepare a response to the determination.
- C. If the employee chooses to make an oral presentation in connection with a request for reconsideration of the denial of a within-grade increase, such a presentation will be made to the next level of supervision above the rating official.
- D. Where the reconsideration official determines that no change in the rating official's determination is appropriate, the letter transmitting the determination shall include a statement which informs the employee that he/she may request the Union to appeal the decision to binding arbitration.

# ARTICLE 18

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## AWARDS

### Section 1: General

- A. Performance and incentive awards programs are designed to motivate employees by recognizing and rewarding those employees who attain high levels of performance, and to increase productivity and employee creativity by rewarding employee efforts which improve the efficiency, economy and effectiveness of the Government.
- B. An employee who recognizes the achievements of another employee may communicate that achievement to the employee's supervisor or another management official. While the Employer may consider that achievement in making awards determinations, it is under no obligation to provide that individual with, or recommend him/her for, an award.
- C. There is no entitlement to awards, rather these awards are subject to budgetary limitations. Awards will be implemented in a fair manner made at management's discretion consistent with the terms and conditions of this Article and the law. FEC awards may fall into the following categories:

#### 1. PERFORMANCE AWARDS

- a. Sustained Superior Performance (SSP)
- b. Performance-Based QSI

#### 2. MONETARY AWARDS

- a. Special Achievement Awards
- b. Distinguished Service Award\*
- c. On-the-Spot Awards\*
- d. Outstanding Support Staff Award\*
- e. Newcomer Award\*
- f. Group or Team Work Awards\*
- g. Innovation Award\*

#### 3. NON-MONETARY AWARDS

- a. Honorary Recognition
- b. Time Off Awards

\*These awards will be allocated in accordance with the FEC Employee Award and Recognition Program dated January 22, 2008.

## **Section 2: Documents to the Union**

- A. At the end of each fiscal year, the Employer will send NTEU an electronic spreadsheet showing the following for each FEC employee, including those outside the bargaining unit:
1. Grade
  2. Step
  3. Organizational component
  4. Race
  5. National Origin
  6. Gender
  7. Date of Birth
  8. QSI received
  9. SSP and amount received
  10. Granting of any other monetary award
  11. Date of last career ladder promotion
  12. Date of last step increase
- B. Information may be redacted to prevent disclosures prohibited by the Privacy Act or 5 CFR 293.311. The Employer does not need to provide the name of the employee.

## **Section 3: Awards Procedures**

The Employer has decided to utilize the following types of awards to recognize significant achievements by employees within a bargaining unit:

- A. Quality Step Increase (QSI)
1. An employee is eligible to receive a step increase if he/she: (1) is below step 10 of their grade level; (2) receives an "Outstanding" annual performance rating (i.e., official rating of record) in one position held for at least twelve (12) months; and (3) has not received a QSI within the preceding 52 consecutive calendar weeks.
  2. Once an employee is eligible for a QSI, the employee's name will be forwarded to the appropriate office head to be considered for approval of the QSI. QSI determinations will be made in a fair manner.

B. Performance Awards - Sustained Superior Performance (SSP)

1. A lump-sum cash award based on high quality performance. Such awards must be based on a minimum period of six (6) months of performance in one position (only one such award may be granted in a 1-year period). An SSP award shall be granted when an employee's overall performance rating is at the "Exceeds Requirements" Level or higher.
2. SSP awards are made during August of each calendar year.
3. Under the SSP awards program, award distributions are based on the mid-point (i.e. Step 5 of the grade) of the employee's salary (including locality pay):

Summary Rating Level / Percentage of Mid-Point Salary

4.0 to 4.24	.75%
4.25 to 4.49	1.00%
4.50 to 4.99	1.75%
5.00	2.75%

The minimum performance award is \$450 or the percentage of midpoint salary, whichever is higher. If any appraisal contains a rating of "unacceptable" in any element, the employee will not receive a performance award regardless of the total points given on the appraisal.

4. If, in any year, there are insufficient funds to provide bargaining unit SSP awards in the amounts indicated in the LMA because the total amount of all agency performance awards (bargaining unit SSP award and non-bargaining unit annual performance awards) would exceed the total remaining FEC awards budget, the FEC will reduce the bargaining unit SSP awards by the same reduction ratio used to reduce non-bargaining unit performance awards. The reduction ratio will be the actual remaining awards budget funds divided by the total amount of all agency performance awards. For example, if the total remaining performance awards budget is \$100,000, and the total amount of all agency performance awards is \$125,000, then the FEC will reduce all performance awards to 80% ( $100,000 / 125,000$ ). Therefore, every performance award amount will be multiplied by 80%. If management determines that there will be no reduction to non-bargaining unit performance awards, then there will be no reduction to bargaining unit SSP.

Prior to such a reduction, the Agency will provide NTEU with advance notice (no later than July 1) and an opportunity to discuss the FEC's decision to reduce the performance awards budget. This discussion(s) will not waive

FEC's obligation to bargain changes in conditions of employment to the extent that such obligations are required by contract or law.

FEC shall retain discretion to determine the overall amount of awards funding allocated to SSP and performance awards, compared with the amount of funding allocated to other types of awards.

C. Special Achievement (SA)

A lump-sum cash award based on a one-time special act, service or achievement of a non-recurring nature by an employee or group of employees in the public interest connected with or related to official employment. Such awards shall be based on the tangible and/or intangible benefits derived. The amount should be equal with the value of the individual or team accomplishment. The justification should give details on the Achievement (e.g., exceptionally high quality work under tight deadlines; added or emergency assignments in addition to their regular duties or addressing a critical need or difficult problem.)

D. Distinguished Service Award

This award recognizes the outstanding accomplishments of individual employees for superior achievements during the preceding year, which have had notable beneficial impact on the mission of the FEC. Nominees for this award should have demonstrated superior performance in accomplishing a task or project that significantly promoted the mission of the FEC. The award will consist of an engraved medallion and a cash award of up to one thousand dollars (\$1,000) to each recipient.

E. On-the-Spot Awards (OTS)

On-the-Spot awards are special act or service awards which normally provide immediate recognition for employees and are limited in amount. These awards are informal awards which would range in cash values of up to \$100.00 - \$250.00 maximum.

F. Outstanding Support Staff Award

This award recognizes employees who occupy secretarial, administrative or clerical positions who are high achievers among their peers and who have exhibited outstanding performance in support positions demanding dedication and professional skills. Nominees for this award should have consistently provided outstanding support services, including responsiveness to program needs, willingness to assume responsibility, and initiative in improving work methods or operations. The award will consist of a certificate of appreciation and a cash award of up to five-hundred dollars (\$500) to each recipient.

#### G. Newcomer Award

This award recognizes our newest employees whose untiring efforts have significantly contributed to the success and mission of the FEC. Nominees for this award should have demonstrated a high level of performance and productivity in their regularly assigned duties, showing exceptional teamwork, integrity and leadership that results in an important contribution to the work of their office and to the mission of the FEC. Any current employee (full-time or part-time) who has been at the FEC for at least six months but no more than two years is eligible to receive this award. The award will consist of an engraved plaque of appreciation and a cash award of up to one-hundred and fifty dollars (\$150) to each recipient.

#### H. Innovation Award

This award recognizes employees who have suggested or initiated a solution to a problem or a new approach that has substantially impacted quality and productivity at the FEC. Nominees for this award should have suggested or initiated an innovative solution or approach to a problem or an opportunity for improvement that results in reduced waste inefficiency, and/or cost or promotes the mission of the FEC. Up to four of these awards will be given out. The award will consist of an engraved plaque and a cash award of up to five-hundred dollars (\$500) to each recipient.

#### I. Team Work Performance Award

This award recognizes project teams who have best exemplified the objectives and strategic direction of the Agency. The intent of this award is to recognize a team for a significant accomplishment or contribution to the Agency. The award is also designed to increase visibility and accomplishment of organizational goals, advance the use of teamwork in the work environment, and motivate all FEC employees to improve the level of team performance. This award will recognize any team either already established within a work unit or a team specifically put together to address an Agency issue or tackle a problem facing the Agency. Up to three of these awards will be given out. The award will consist of an engraved medallion and a cash award of up to and not to exceed \$7500 total for this award category.

#### J. Honorary Recognition

Letters of appreciation, certificates of achievement, plaques or similar or like forms of recognition, presented in recognition of special efforts, services, or achievements.

#### K. Time Off Award

1. An excused absence awarded to an employee without charge to leave in recognition of a special contribution, achievement, or performance. The minimum time off recognition is one hour; the time-off award shall not exceed 40 hours per event or 80 hours total per year. The amount of time a supervisor can grant will be limited to an amount up to one full work day per award. Longer time off awards may be granted with the permission of the Staff Director. These limits include performance-based time off awards. Employees normally have the discretion to determine when they will use a time off award, subject to supervisory approval. Approval to take the time off shall be granted in the same manner as annual leave. Any time off award under this provision will expire one (1) year after the award is received. A time off award must be used while the recipient is employed at the FEC, the time off award cannot be transferred to another agency upon separation of the employee. Further, upon separation from the FEC, employees are not entitled to receive payment for any unused time off award hours.
2. Consistent with the rules and regulations governing time off awards, employees may request to receive an equivalent time off award (or a portion thereof) instead of an approved cash performance award or QSI. It is within the Employer's sole discretion whether to grant time off in lieu of cash or QSI to an employee. If granted, the scheduling and use of time off shall be subject to the same approval process as is used for annual leave as set forth in Art. 27 of this Agreement.

#### L. Non-Monetary (non-cash) Recognition and Informal Honor

1. Nominal Value (up to \$25 cash value): such as coffee mugs, key chains, pens, paperweights, plaques, T-shirt, or other appropriate items.
2. Significant Value (from \$26 to \$250 cash value): such as pen/pencil set, clocks, desk organizers, jackets, watches, gift certificates, tickets to an event, or other appropriate items.

### **Section 4: Award Nominations**

All award nominations, with the exception of Employee Recognition Program awards, shall be submitted in writing, by the first-line supervisor, through the appropriate channels for consideration.

**Section 5: Documentation**

Awards shall be documented in the employee's Official Personnel Folder (OPF).

**Section 6: Bargaining**

If the employer wishes to establish any other award programs for bargaining unit employees after the effective date of this Agreement, it will serve notice on the Union and the Union will have the opportunity to negotiate all appropriate issues on behalf of employees.

**Section 7: Awards Grievances**

Employees may grieve the misapplication of this Article pursuant to Article 47, Section 7(A) of this Agreement.

# ARTICLE 19

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## COUNSELING AND INDIVIDUAL DEVELOPMENT PLANS

**Section 1:** The Employer agrees to use coaching techniques to help employees maintain their current level of performance and to advance their careers. When possible, the Employer should counsel an employee as soon as it sees a performance problem developing in the employee.

**Section 2:** Individual Development Plan (IDP).

- A. Employees are encouraged, but not required, to establish their own Individual Development Plan for advancement within the Commission. The IDP will initially be proposed by the employee, and will be reviewed by the Employer. The IDP will be finalized between the employee and the Employer once the Employer has commented on and approved the employee's IDP. The IDP should consist of a clear and specific plan for developing the employee's potential within the next year. IDPs will cover a one year period of time, but may be revised during the year by mutual agreement. Permanent employees will be allowed up to two (2) hours of time without charge to leave to prepare an IDP.
- B. Employees who choose to develop an Individual Development Plan (IDP), will receive assistance and advice from the Employer. Although the primary responsibility for proposing an IDP for career advancement falls with the employee, the Employer will provide advice and assistance. The primary emphasis of the Plans will be, first, to address the skills needed by employees in their current positions; second, to prepare them for new career opportunities; and third, to address the skills needed for advancement beyond their current level. Each Plan shall establish a goal or goals and shall state the responsibilities of each party to realize such goals. Approval of Plans is at the discretion of the Employer. If a supervisor and an employee cannot reach agreement on an IDP, the employee may request, in writing, that the employer memorialize its disapproval of the IDP in writing.
- C. Examples of items appropriate for inclusion on an IDP are as follows:
  - 1. on-the-job training;
  - 2. employer-paid training;

3. self-development efforts, such as employee-paid training and after-hours courses;
  - a. rotational assignments; and
  - b. programs of outside reading and independent study.

D. Both the employee and the Employer will make best efforts to fulfill the provisions of the IDP. It is recognized that the terms and approval of any IDP are subject to considerations such as workload, staffing, and budget.

**Section 3:** The IDP shall be drafted and finalized on the form identified in Appendix II of this Agreement.

**Section 4:** Based upon a sufficient level of interest, as demonstrated through a sign-up sheet, the Employer shall provide a career development seminar conducted by career development counselors during normal business hours, annually.

**Section 5:** The IDP shall be considered a "Notice to Employees" for the purposes of Article 29 of this Agreement, and therefore, the employee may opt to provide the Union with a copy.

# ARTICLE 20

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## UNACCEPTABLE PERFORMANCE PROCEDURES

**Section 1:** The purpose of the following procedure is to:

- A. assist employees in improving unacceptable performance; and
- B. provide a fair and equitable procedure for reassigning, reducing in grade or removing employees whose performance continues to be unacceptable, but only after having been given an opportunity to demonstrate acceptable performance.

**Section 2:** Unacceptable Performance

- A. Unacceptable performance is that which fails to meet the minimally acceptable level (less than 2.00) in one (1) or more critical elements of an employee's position.
- B. This Article sets forth procedures for the processing of the following actions based solely on unacceptable performance against permanent bargaining unit employees who have completed their probationary periods:
  - 1. reductions-in-grade; and
  - 2. removals.

It does not apply to any actions excluded by the provisions of 5 C.F.R. § 432.102(b).

- C. An employee may be reduced in grade or removed at any time during the performance appraisal cycle when the employee's performance in one (1) or more critical elements of the job becomes unacceptable. When taking such actions, the Employer may not cite instances of unacceptable performance which occurred more than one (1) year prior to the initiation of the action.

**Section 3:**

- A. When an unacceptable rating is justified, it is recognized that such could be the basis for a reassignment, reduction-in-grade or removal.

- B. The Employer shall consider reassigning an employee before it demotes or removes him/her for poor performance. Similarly, the Employer may consider demoting an employee before removing him/her for poor performance.

**Section 4:** Warning Letter.

Before notice of a proposed action is given to the employee, a pre-notice, or warning letter must be given, as referred to in Article 12, Part 2, Section 10(B) of this Agreement.

**Section 5:** An employee whose reduction in grade or removal is proposed under this Section is entitled to thirty (30) days advance written notice of the proposed action.

Such notice will:

- A. state that reduction in grade or removal is proposed;
- B. state the standard(s) and critical element(s) of the employee's position on which performance is considered unacceptable;
- C. state specific instances of unacceptable performance on which the proposed action is based;
- D. state that the employee is entitled to be represented by an attorney or other representative;
- E. state that the employee is entitled to respond, orally and in writing, within fifteen (15) work days, (absent extenuating circumstances) and specify to whom such response is to be made;
- F. attach to the notice all evidence upon which the Employer is relying in the matter;
- G. state that the thirty day "notice period" shall begin to run as of the date of service or attempted service of the written notice; and
- H. state that the employee shall remain on active duty status during the notice period (i.e., opportunity to demonstrate acceptable performance) and that a determination as to reduction in grade or removal will be made after the expiration of the notice period. If the employee demonstrates improved performance such that the employee may reasonably be expected to achieve acceptable performance, the notice period shall be extended thirty (30) days.

**Section 6:** If an adverse action taken under this Article, an employee will not be charged with instances of poor performance which occurred more than one (1) calendar year prior to the date on which the employee received the advance notice letter.

Additionally, in reaching a final decision, the Employer may not rely on employee performance which was not specifically described in the advance notice letter.

**Section 7:** The decision to retain, reduce in grade, or remove the employee shall be made within thirty (30) days after the expiration of the notice period.

- A. If, because of performance improvement during the notice period, it is determined that the employee will not be reduced in grade or removed, the employee will be notified of that determination as soon as practicable. If the employee's performance continues to be acceptable for one (1) year from the date of the advance written notice specified in Section 5 above, any entry or other notation of unsatisfactory performance for which action was proposed under this Section shall be removed from Agency personnel records held in the employee's Official Personnel Folder (OPF).
- B. If it has been determined that the employee will be reduced in grade or removed, the employee will be served with written notice of that determination as soon as practicable. Such notice will:
  - 1. specify the instances of unacceptable performance on which the action is based;
  - 2. be concurred in by a higher-ranking official than the official who proposed the action (unless proposed by the Head of the Agency); and
  - 3. state the effective date of the action, which shall normally be no sooner than two (2) weeks after the date of the decision.

**Section 8: Disputes**

- A. The final decision to effect an adverse action is subject to immediate arbitration by the Union without prior resort to the grievance procedures, so long as arbitration is invoked in accord with the time limits and procedures of Article 48 of this Agreement.
- B. Employees may appeal actions taken pursuant to this Article to the Merit Systems Protection Board, or the Union may pursue the matter via the negotiated arbitration procedure provided in Article 48 of this Agreement. The employee may not utilize both procedures, but must elect one or the other in writing and in accordance with established time limits.
- C. An arbitrator hearing a grievance regarding an action taken pursuant to this Article must sustain the action if it is supported by substantial evidence.

# ARTICLE 21

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## TRAINING

### Section 1: Purpose

The parties agree that training and career development of employees, and feedback from employees on training and career development programs and opportunities, are matters of significant importance to fulfilling the mission of the Commission. Agency-sponsored training programs will be administered in a fair and equitable manner.

### Section 2: Notice

The Agency will notify employees of mandatory, agency-wide, or division/office-wide training as appropriate. Employees may be required to attend mission-essential training related to their particular skill sets or core duties. In such circumstances, notice will not be provided to all employees.

The Employer will make available to all employees the most current information available concerning training or educational programs provided by the Office of Personnel Management, the Federal Election Commission, and other appropriate sources. The employer shall post training resources, when available, on the agency's intranet.

### Section 3: Obligations

Employees are responsible for self-development, for successfully completing and applying authorized training, and for fulfilling continued service agreements. In addition, they share with the Employer responsibility to identify training needed to improve individual and organizational performance and to identify methods to meet those needs, effectively and efficiently.

### Section 4: Required Training

The Employer may require any employee to attend training that it deems necessary for the employee to perform the duties of the employee's current job assignment or a future job assignment for which the employee has been selected. In such instances, the Employer will pay the necessary training costs.

If training is required before an employee may be considered for a promotion, selection for the training will be made in accordance with competitive merit promotion procedures.

## **Section 5: Optional Training**

Employees are encouraged to take training that could be beneficial for the employee in his/her current position or for his/her career development, and to discuss training needs with their supervisors.

### **A. Reimbursements for Training**

Employees shall be reimbursed for approved training when all of the following conditions are met:

1. budgetary resources are available;
2. the training will enable the employee to increase his/her ability to perform his/her current job or a job he/she can be reasonably expected to hold in the future;
3. comparable training is not available through FEC-developed courses;
4. a reasonable inquiry has failed to disclose suitable, adequate and timely programs being offered by other government agencies within the local area;
5. the course meets the needs of the employee and the Employer as well as or better than other courses of its nature which may also be available at that time;
6. the course is not being taken solely for the purpose of obtaining a degree; and
7. the employee's absence would not cause workload disruption.

### **B. Multiple Requests to Attend Optional Training**

The parties recognize training opportunities arise which are not required for promotion, but may be beneficial to multiple employees' professional development while in their current positions. Where such opportunities arise, the selection for the training will be conducted in a fair and equitable manner, taking into consideration various factors such as: the employees' skill and experience levels, prior training attended by the employees, etc.

## **Section 6: Training Requests**

All training requests (for required and optional training) must be submitted to the employee's supervisor for approval. Only training requests that have been approved by the employee's supervisory chain will be presented to the Office of the Chief Financial Officer for payment. If an employee takes training that is not approved, he/she must pay the costs for the training. Training requests forwarded to the Office of the Chief

Financial Officer for payment (e.g., through SF-182s) must be submitted in accordance with the procedures of that Office.

**Section 7: Training for New Assignments and/or New Employees.**

The Employer agrees to notify newly hired or employees newly assigned to a position, within thirty (30) calendar days of the employee's start date or date of transfer, of the availability of job-specific training and instruction the Employer considers necessary for the new position or assignment. To "notify," for purposes of this Article, means to provide the employee with information on the type of job-specific training and instruction needed, if any, and the date, if ascertainable, that the training and instruction will be made available.

**Section 8: Training for Reassignments**

The Employer agrees that when an employee is reassigned from one bargaining unit position to another, the Employer will provide training the Employer deems necessary for the employee to perform the duties of the new position.

The Union agrees to encourage employees to take advantage of suitable training, education, and career-development opportunities.

**Section 9: Failure to Complete Optional Training**

Employees who fail to successfully complete an Optional Training course under Section 5, above, may be required to reimburse any course costs paid by the Employer. Where employees are graded during the course, successful completion of the course for reimbursement purposes shall be defined as receiving a passing grade (i.e., a C or better, or a Pass) in the course.

**Section 10: Continuation of Service Agreement**

Any continuation of service agreements for training will be governed by 5 USC § 4108 and applicable rules and regulations.

**Section 11: Training as a Defense**

An employee will have the right to raise lack of necessary training as a defense to a disciplinary, adverse, or unacceptable performance action.

**Section 12: Employer Right to Determine Training**

The Employer will determine necessary training for all employees.

# ARTICLE 22

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## HOURS OF WORK

### PART A – General Hours of Work Procedures (For All Work Schedules)

#### **Section 1: Objectives**

The parties recognize that affording various options for employee work schedules has the potential to enhance employee work/life balance, provide flexibility in their work lives, and improve employee morale and retention while ensuring that the Agency's mission is accomplished, and its operations are continuing, in an effective, efficient and productive manner. For these reasons, the parties adopt the following agreement with respect to the hours of work and alternative work schedules of bargaining unit employees. The provisions of this Article, to the extent that there is a conflict, supersede any previous memoranda of understanding between the parties.

#### **Section 2: Hours of Duty & Core Hours**

The normal hours of duty for the Agency are 9:00 a.m. through 5:30 p.m. Because these are the hours during which the agency serves the public, it is understood by the parties that adequate staff must be available to be of service to the public, the Congress, or other entities which have business with the Agency during these hours.

All full-time employees on a regular 8-hour or a compressed work schedule are required to complete their work hours between 6:30 a.m. and 6:00 p.m. Additionally, all employees are required to be on duty during the hours of 10:00 a.m. and 3:00 p.m. (excluding a lunch period), which are hereafter referred to as the "core hours."

#### **Section 3: Regular 8-Hour Work Schedules**

All full-time employees who do not have an alternative work schedule (AWS) as defined by Parts B and C of this Article are required to work five (5) days each work week, for a period of eight (8) hours of duty, excluding the lunch period. As provided in Section 2, such duty must be performed between the hours of 6:30 a.m. and 6:00 p.m.

#### **Section 4: Lunch & Break Periods**

- A. Employees are permitted one 30-minute nonpaid lunch period, which is not included in the employee's duty hours (i.e. the employee's 8, 9, or 10 work hours). Additionally, employees may receive a one-hour lunch if they extend their

tours of duty by thirty (30) minutes. For example, if an employee's tour of duty is from 8-4:30 (with a 30-minute lunch period), he can change his schedule from 8-5 to allow for a 1 hour lunch period. This one-hour lunch period remains unpaid, and cannot be used to incur overtime, compensatory time, or any other premium pay. Moreover, an employee cannot extend his/her lunch period if doing so will result in night pay differential.

- B. Employees are permitted two 15-minute paid breaks, aside from the lunch period, to be included within their regular 8, 9, or 10-hour work day. Based on federal regulation, these breaks cannot be combined with the employee's lunch period so as to allow for a longer lunch period. Additionally, the Employer cannot require employees to work during his/her 30-minute lunch period.
- C. An employee's break or lunch period cannot be scheduled at the beginning or end of an employee's shift. For example, an employee who works from 8-4:30, cannot schedule his/her lunch break from 8-8:30, or from 4-4:30, so as to allow him/her to arrive late or leave early.

#### **Section 5: Work Schedule Request Procedures**

- A. New Employees. Upon the start of their employment with the FEC, new employees will have a regular 8-hour work schedule until: 1) they have completed all required training; and 2) the next work schedule open season period begins. Thereafter, such employees will follow the procedures in Section 5(B) for altering their work schedules.
- B. Work Schedule Open Season Periods
  - 1. In May, August, and December of each year (i.e. every 4 months), the Employer shall issue a notice to employees notifying them of the open season period for altering their work schedules.
  - 2. Upon receipt of this notice, employees will be provided a seven day period in which to submit written requests for tours of duty. Employees will be able to submit their first (1st) and second (2nd) choices.
  - 3. Within thirty (30) days of the deadline for receipt of employee requests, the Employer will inform the Union of the tentative tour of duty schedule for each participating employee. The employee's immediate supervisor will respond to the employee's proposed work schedule within ten (10) work days of receipt. All denials shall include a written explanation and be provided to the employee and NTEU. Disputes regarding scheduling will be resolved within individual work groups. It is contemplated by the parties that individual disputes will be resolved informally. When FEC EOD is the same, grade and

time-in-grade seniority will generally be used as a tie breaker for any work schedule disputes.

- C. **Withdrawals from Alternative Work Schedule Programs.** Employees participating in an alternative work schedule program may drop out of the Program at the next four-month open season period. In the event of an emergency, an employee may submit a request to his/her supervisor to withdraw from the alternative work schedule program outside of the open season period. The Employer has the discretion to approve work schedule requests outside of the open season period. However, employees who drop out of the Program may not rejoin until the next open season period.
- D. **Accommodations and Settlements.** This section is not applicable to work schedules provided as a reasonable accommodation for a covered disability under the Rehabilitation Act, or to any work schedule changes occurring as a result of a settlement agreement.

#### **Section 6: Minimal Variations in Arrival and Departure Times**

- A. **Arrival and Departure Times.** Employees may vary their arrival/departure times by up to fifteen (15) minutes from the daily schedule without notice to the Employer so long as the employee works the full shift scheduled for that day. Thus if an employee's normal shift is from 8:00 a.m. to 4:30 p.m., and he or she arrives at 8:15 a.m., he or she may work until 4:45 p.m. without notifying his supervisor. Similarly, if the employee arrives at 7:45 a.m., he or she may work until 4:15 p.m. without notifying his supervisor.
- B. **Excessive Tardiness.**
  - 1. Employees must request advance approval, wherever practicable, for late arrivals or early departures exceeding fifteen (15) minutes.
  - 2. In such cases, alternate arrangements must be made to make up the time lost, either by additional time worked that day, or by approved leave.
  - 3. Employees who abuse this provision (i.e. fail to obtain advance approval) may be required to use a temporary sign-in/sign-out procedure for up to ninety (90) days or be charged as Absent Without Leave (AWOL) or other disciplinary charges (e.g., failure to follow leave procedures).

## **Section 7: Eligibility Criteria for Alternative Work Schedule (AWS) Programs**

- A. To participate in any of the flexible or compressed work schedule programs (Maxiflex, 5-4/9, 4/10), the employee must meet the following criteria:
1. Employees must not currently be on a Performance Improvement Plan.
  2. Employees must have an overall rating of 3.0 or higher, and at least a 3.0 in each element on their last performance appraisal.
  3. Employees may be on a full-time or part-time tour of duty. However, part-time employees with management approval, may be allowed to structure their workdays as a compressed schedule, e.g., three 10-hour days.
  4. As appropriate, participants may be removed from the program when they are subject to a leave restriction letter.
- B. New Employees. Upon the start of their employment with the FEC, new employees will have a regular 8-hour work schedule until: 1) they have completed all required training; 2) must be at least at the “meets” level for the position; and 3) the next work schedule open season period begins. Thereafter, such employees will follow the procedures in Section 5 for altering their work schedules.
- Probationary employees who have not received a performance appraisal for their current position must serve at least 90 days in the position. After which, they may apply to the program during the next application period. As part of the approval process, the supervisor must assess the employee's performance to be at least at the "Acceptable" level for the position. If the supervisor does not assess the employee's performance at this level, the supervisor will deny the application and provide to the employee and the Union a written explanation for the denial.
- C. Intermittent employees and employees hired under a temporary appointment authority are not eligible to participate in the program.

## **PART B – Compressed Work Schedules**

### **Section 1: Purpose**

The purpose of establishing a Compressed Work Week Schedule Program (the "CWS Program") is to improve productivity and provide greater service to the public by providing greater work schedule flexibility to Commission employees. The purpose of this Part is to memorialize procedures for the agency's 9-hour ("5-4/9") and 10-hour ("4/10") compressed work week schedule programs. To the extent that there is a

conflict, the provisions in Part B shall supersede any previous alternative work schedule agreements between the parties.

## **Section 2: Definitions**

A compressed work week schedule by nature is a “fixed” work schedule, not a flexible work schedule. As a result, employees on a CWS schedule cannot vary their work hours or work days (i.e. an employee on a CWS 5/4-9 schedule cannot work 7 hours on Monday, and 11 hours on Tuesday, nor can the employee have varying arrival and departure times). The specific CWS program(s) established under this Part are as follows:

- A. 5/4-9 Work Schedule. Participating employees will have an established 80-hour/ten-day per pay period tour of duty. Employees participating in the 5-4/9 Plan will work a nine-hour shift for eight (8) days and one (1) day will be of eight (8) hours duration. The remaining day is a non-work day (i.e. the "off-day").
- B. 4-10 Work Schedule. Participating employees must work 10 hours a day, 40 hours a week, and 80 hours a biweekly pay period. Each week, the employee will have one off-day.

## **Section 3: Application**

- A. The CWS Program is available to all eligible permanent employees, unless precluded by Part A Section 7 or any of the exclusions provided in this Article, who submit the proper compressed work schedule request application as provided in Part A Section 5. The application must be submitted in accordance with the work schedule request procedures described in Part A, Section 5, of this Article. All eligible employees identified in Part A Section 7 may participate at the discretion of the Employer. Law Clerks hired by the Office of General Counsel for permanent attorney positions on the condition that they pass the Bar are considered to be permanent for the purpose of this Article.
- B. An employee’s request for a compressed work schedule may be denied if the request would cause any of the following:
  - 1. diminished level of services,
  - 2. insufficient coverage; or
  - 3. increased cost.

#### **Section 4: Termination of Compressed Work Schedules**

- A. Termination or Discontinuation of the CWS Program. Consistent with 5 U.S.C. § 6131, if the agency head finds that a particular alternative work schedule program (compressed work schedule) has had or would have an adverse agency impact (i.e., a reduction in productivity, a diminished level of services furnished to the public, an increase in the cost of agency operations), the agency may terminate or discontinue the program. Prior to implementing the change, the Union will be given notice and the opportunity to bargain to the extent required by law.
  
- B. Restrictions, Exclusions or Suspensions of Employees' Compressed Work Schedules. With respect to exclusions of employees based on the Employer's coverage assessment, consistent with 5 U.S.C. § 6120, et. seq., the Employer may:
  - 1. restrict the employees' choice of arrival and departure times and/or their 'off-day';
  - 2. exclude or suspend employees from the CWS Program; or
  - 3. consider other available options prior to making the above restrictions, suspensions, or exclusions, and may also consider the affected employee's financial or personal hardships. Prior to making the change, the Employer will provide NTEU with notice and an opportunity to bargain consistent with Article 45 (unless the restriction, exclusion, or suspension is made for seniority reasons). Supporting documentation will be provided upon request to the Union.
  
- C. Travel. The Employer may, in its discretion, require employees in a travel status to revert to a normal fixed tour of duty for all or part of the pay period(s) in which travel occurs. If not, employees who are required to work on their normal "off- day" will be covered by Section 6(C)(3) below.

**Section 5: Core Hours.** Employees participating in the CWS Program must be regularly scheduled to complete their duties between the hours of 6:30 a.m. and 6:00 p.m. daily. Employees seeking to have later end times should review the Maxiflex program as an alternative.

#### **Section 6: Modifications to Approved Work Schedules**

##### **A. Off Day Switch**

Employees shall be allowed to alter their regularly scheduled off day with prior approval from his/her manager. The request to switch off days will be subject to restrictions necessitated by management staffing requirements in

accordance with Sections 3 and 4 of this Part.

#### B. Priority

1. Seniority, for purposes of selecting an alternate work schedule, is defined as the FEC entry on duty date (EOD).
2. New employees and intra-agency transfers (i.e. from one FEC Office/Division to another) may immediately enter the alternative work schedule program upon completion of any required training program. However, intra-agency transfer employees shall have no rights to bump other AWS employees based upon their FEC seniority until the beginning of the next open season period.
3. When a member of a work group resigns or otherwise drops out of the Program, another member of the work group currently in the Program not having his or her preferred off-day may switch to the open off-day, within the restrictions set forth in Sections 3 and 4 of this Part. If there is more than one (1) such request, FEC seniority will prevail. Any such changes shall be made as required.

#### C. Special Pay Provisions for CWS Employees

1. Leave and Premium Pay: Provisions for premium pay, absences, and leave are as specified in the applicable statute, regulation and this Agreement.
2. Overtime Pay: Pursuant to 5 USC § 6128, employees shall only be entitled to overtime for hours worked outside of their fixed compressed work schedule. Thus if an employee's work hours are from 7:30 a.m. to 6:00 p.m., he/she may only receive overtime compensation for hours worked with prior approval beyond 6:00 p.m.
3. Compensatory Time for Working on an Off Day: If possible, a supervisor will give an employee at least five (5) workdays notice if he/she requires the employee to report to work on the employee's off day. The employee will be permitted to substitute their regularly scheduled compressed day off for another work day in the pay period. In the event the employee cannot substitute his/her off-day for another work day within that pay period (i.e. because there are no remaining work days in the same pay period) he/she may request compensatory or overtime pay for the missed day off in accordance with 5 CFR §§ 550.114 and 551.531 and Article 25 of this Agreement. Employees receiving compensatory time must utilize the time within 26 pay periods.

#### 4. Holiday Pay

- a. Holiday Pay for Part Time Employees. Part time employees on a CWS are entitled to pay on a Federal holiday for the number of hours he/she would have been scheduled to work on that day. For part time employees, holiday pay cannot exceed 8 hours.
- b. Holiday Pay for Full Time Employees. Full time employees on a CWS are entitled to pay on a Federal holiday for the number of hours he/she would have been scheduled to work on that day. Thus if the employee is on a 4/10 compressed work schedule, and one of the days he/she is scheduled to work falls on a Federal holiday, he/she is entitled to 10 hours of holiday pay. Employees should review their WebTA time sheets prior to validating their time to make sure their holiday pay has been properly calculated.

#### **Section 7: Holidays.**

- A. Federal holidays are limited to those defined at 5 U.S.C. § 6103. Inauguration Day is not a Federal holiday for the purposes of this Section.
- B. "In Lieu of" Holiday. When a Federal holiday falls on a full time employee's off-day, the employee is entitled to an additional day-off, referred to as the "in lieu of" holiday. Part time employees are not entitled to "in lieu of" days. When a holiday falls on a Friday off-day, the preceding Thursday is the "in lieu of" holiday. If it falls on a Monday off-day, the following Tuesday is the "in lieu of" holiday. If it falls on a Tuesday, Wednesday, or Thursday off-day, attempts will be made to mutually select another off-day for that pay period. If this cannot be done, a corresponding amount of compensatory time will be granted.

**Section 8: Time Accounting.** Employees are required to request approval in advance (if possible) from the Employer for lunch periods exceeding the normally allotted time, and for any non-work related absences. Upon returning to duty, such employees must check-in with their Employer and make up the necessary time through approved leave and/or additional work that day.

#### **Section 9: Miscellaneous**

- A. Court Leave. Employees serving jury or other authorized court duty may charge a maximum of 9 or 10 hours a day (dependent upon whether the employee is on a 4-5/9 or 4/10 work schedule) of court leave without charge to leave or loss of pay.

- B. Registration and Voting. The employee's usual arrival and departure times are used to determine the amount of leave that may be granted for registration and voting.
- C. Training/Conferences. 9 or 10 hours (dependent upon whether the employee is on a 4-5/9 or 4/10 work schedule) may be credited for a training/conference session scheduled for substantially a full day, if the training day falls on the employee's scheduled work day. For training/conference sessions lasting 5 or more work days, the employee shall revert to a normal fixed 8-hour tour of duty for all of the pay period(s) in which the training/conference session occurs.
- D. Office Closings. Employees who are scheduled for an 'off-day' on a day when the office is closed due to an emergency will not be granted administrative leave for that day.

## **PART C – Flexible Work Schedules (Maxiflex)**

**Section 1:** Purpose. The purpose of this Part is to memorialize procedures for the agency's flexible work schedule program (Maxiflex). Maxiflex is a set work schedule where an employee works less than ten (10) days in a biweekly pay period, but has a basic work requirement of eighty (80) hours during that pay period. Employees on a Maxiflex schedule may vary the number of hours worked on a given workday, or the number of hours worked each week, within the limits established by the Agency. Employees can only change their permanent work schedules once every four months.

**Section 2:** Discontinuation of Program. In accordance with 5 U.S.C. § 6131, if the Employer determines not to continue the Maxiflex program because it has an adverse agency impact on agency operations (i.e. a reduction of the productivity of the agency; a diminished level of service to the public; or an increase in agency operations cost), it will notify NTEU and bargain to the extent required by law. Any bargaining will be conducted using Article 45 of this Agreement.

### **Section 3: Definitions**

- A. **Core hours:** Core hours are the period of time when all employees must be at work or in an approved leave status. As provided in Part A Section 2 of this Article, the Agency's core hours are from 10:00 a.m. through 3:00 p.m., Monday through Friday. Employees on a Maxiflex schedule are required to work the full core hours for each day that they are scheduled to work.
- B. **Core workdays:** Core workdays are any days, Monday through Friday, in which employees are expected to work (i.e. duty days). Under a Maxiflex schedule, employees must work at least eight (8) of the ten (10) days in a biweekly pay

period in order to meet their 80- hour work requirement.

- C. **Flexible hours:** The flexible hours are the designated hours during which an employee may choose to vary his/her arrival and departure times consistent with the Employer-established requirements of his/her position. Flexible hours are worked on core workdays during the hours of 6:30 a.m. to 10:00 a.m. and 3:00 p.m. to 7:30 p.m.
- D. **Non-core days:** Non-core days are any days, Monday through Friday, up to two (2) days per biweekly pay period, when an employee is not scheduled to work. Non-core days are commonly referred to as “off days.”

**Section 4:** Eligibility Criteria. The eligibility requirements for employees on a Maxiflex schedule shall be the same as provided in Part A Section 7 of this Article, except that Maxiflex is only available for full time employees.

**Section 5:** Approval. Once determined to be eligible, an employee’s Maxiflex schedule request will be approved unless the request would cause any of the following:

- A. diminished level of services;
- B. insufficient coverage; or
- C. increased cost.

**Section 6:** Maxiflex Work Schedules Program. The Maxiflex Work Schedule Program established under this Part is as follows:

- A. Employees must work eighty (80) hours in a biweekly pay period (excluding credit hours).
- B. Employees are limited to a maximum of ten (10) work hours per day, except for employees who are making up holiday hours per Section 8 of this part. Employees making up holiday hours are limited to a maximum of eleven (11) work hours per day. All work hours must be performed Monday through Friday.
- C. Employees may begin work no earlier than 6:30 a.m., unless approved to work credit hours, compensatory time, or overtime (as applicable under law, rule or regulation).
- D. Employees are required to work during the agency’s core hours (i.e. between 10:00 a.m. and 3:00 p.m.). For example an employee could not arrive to work at 11:00 a.m., or leave work at 2:00 p.m.

- E. Employees may vary their arrival and departure work times during the flexible hours of 6:30 a.m. to 10:00 a.m. and 3:00 p.m. to 7:30 p.m., consistent with the Employer-established duties and requirements of the position.
- F. The employee's tour of duty must reflect that he/she works the full core hours (10:00 a.m. to 3:00 p.m.) plus flexible hours (6:30 a.m. to 10:00 a.m. and 3:00 p.m. to 7:30 p.m.) for each core workday.
- G. Employees are limited to a maximum of two (2) non-core workdays (i.e. "off-days") each biweekly pay period.
- H. Employees on a Maxiflex schedule are subject to the work schedule request procedures provided in Part A, Section 5 of this Article. Accordingly, an employee's Maxiflex work schedule remains the same once it is approved during the work schedules open season period (subject to the exceptions noted in Part A, Section 5).
- I. Employees on a Maxiflex schedule are not eligible for night pay and are not entitled to night pay for voluntarily working flexible hours between 6:00 p.m. and 6:00 a.m., including while earning credit hours. For example, an employee cannot receive night pay if, under his Maxiflex schedule, he has chosen to work from 9 to 7:30 p.m.
- J. Overtime or compensatory hours are all hours worked in excess of 8 hours in a day or 40 hours in a week and are in addition to completion of the biweekly work requirement. Employees who have an approved Maxiflex schedule with scheduled work days exceeding 8 hours will not earn overtime or compensatory time for those hours established as part of their basic work requirement.
- K. To the extent there is not a conflict, the provisions of Article 22 shall apply to employees in the Maxiflex Work Schedule Program. In the event of a conflict, the provisions of this Part of Article 22 shall govern.

**Section 7:** Modifications to Approved Work Schedules. Off Day Switch. Employees shall be allowed to alter their regularly schedule doff day with prior approval from his/her manager. The request to switch off days will be subject to restrictions in necessitated by management staffing requirements in accordance with Section 5 of this Part.

**Section 8:** Holidays. Pursuant to 5 U.S.C. § 6124, full-time employees on a Maxiflex flexible work schedule are entitled to eight (8) hours of holiday pay on holidays. (See Appendix III for corresponding chart.) Employees who are scheduled to work more than eight (8) hours on a holiday may make up those hours during the same pay period of those hours which they do not receive holiday pay.

**Section 9:** Excused Absence. An excused absence is time away from work without loss of pay or charge to leave. Excused absence is also referred to as administrative leave.

Employees on a Maxiflex flexible work schedule are subject to the same requirements for administrative leave as employees covered by other work schedules. However, when agency employees are excused from work because of an office closure due to a weather emergency, furlough, or other emergency, Maxiflex employees who are not scheduled to work that day (i.e. on non-core days or “off day”) are not entitled to an additional day off.

**Section 10:** Credit Hours. Credit hours are hours that an employee on a flexible work schedule elects to work in excess of the basic work requirement in order to vary the length of the work day or work week. Because Maxiflex schedules are flexible work schedules, employees on a Maxiflex schedule are permitted to earn and use credit hours, consistent with Part D of this Article.

**Section 11:** Overtime Provisions for Maxiflex Employees. The Employer may order an employee who works a flexible work schedule (i.e. Maxiflex) to work more hours than the employee was scheduled to work a specific day. If the hours ordered to be worked are not in excess of 8 hours in a day or 40 hours in a week at the time they are performed, the Employer at its discretion may permit, or require, the employee to:

- A. Take time off from work on a subsequent workday for a period of time equal to the number of extra hours of work ordered;
- B. Complete his/her basic work requirement as scheduled and count the extra hours of work ordered as credit hours; or
- C. Complete his/her basic work requirement as scheduled if agency policy permits. Overtime or compensatory time would still be available as provided under Articles 24 and 25 if the employee’s hours exceeded 40 hours a week.

**Section 12:** Examples of Maxiflex Schedules. The following diagrams represent examples of possible Maxiflex schedules. Note that the example schedules include a 30- minute unpaid lunch period.

**EXAMPLE 1:**

***Week One***

	6:30 a.m.	10:00 a.m.			5:00 p.m.		7:30 p.m.	
Monday	6:30 a.m. to 5:00 p.m.							10 hrs
Tuesday	6:30 a.m. to 5:00 p.m.							10 hrs
Wednesday	6:30 a.m. to 5:00 p.m.							10 hrs
Thursday	6:30 a.m. to 5:00 p.m.							10 hrs
Friday	(non-core day)							0 hrs
<b>TOTAL HOURS</b>								<b>40 hrs</b>

***Week Two***

	6:30 a.m.	10:00 a.m.			5:00 p.m.		7:30 p.m.	
Monday	6:30 a.m. to 5:00 p.m.							10 hrs
Tuesday	6:30 a.m. to 5:00 p.m.							10 hrs
Wednesday	6:30 a.m. to 5:00 p.m.							10 hrs
Thursday	6:30 a.m. to 5:00 p.m.							10 hrs
Friday	(non-core day)							0 hrs
<b>TOTAL HOURS</b>								<b>40 hrs</b>

**EXAMPLE 2:**

***Week One***

	6:30 a.m.	10:00 a.m.			5:00 p.m.		7:30 p.m.		
Monday	6:30 a.m. – 5:00 p.m.								10 hrs
Tuesday	7:00 a.m. – 5:30 p.m.								10 hrs
Wednesday	6:30 a.m. – 5:00 p.m.								10 hrs
Thursday	7:00 a.m. – 5:30 p.m.								10 hrs
Friday		9:00 a.m. – 4:30 p.m.						7 hrs	
<b>TOTAL HOURS</b>								<b>47 hrs</b>	

***Week Two***

	6:30 a.m.	10:00 a.m.			5:00 p.m.		7:30 p.m.		
Monday		9:00 a.m. – 7:30 p.m.							10 hrs
Tuesday		10:00 a.m. – 7:30 p.m.							9 hrs
Wednesday		9:00 a.m. – 6:30 p.m.						9 hrs	
Thursday		10:00 a.m. – 3:30 p.m.						5 hrs	
Friday	(non-core day)							0 hrs	
<b>TOTAL HOURS</b>								<b>33 hrs</b>	

**PART D – Credit Hours**

**Section 1: Purpose & Definition.** The purpose of this Article is to establish a credit hour program for bargaining unit employees in order to increase productivity, increase employee flexibility and convenience, and provide improved services to the public by extending office hours and coverage. Credit hours are those hours within a flexible work schedule that an employee elects to work in excess of his or her 80-hour biweekly work requirement, so as to vary the length of a workweek or workday. Only employees on a flexible (not a compressed) work schedule are eligible for credit hours. Employees may

earn credit hours by working earlier than their scheduled arrival time, or by working later than their scheduled departure time.

**Section 2:** Eligibility. Subject to the provisions of Section 6 below, all full-time and part-time permanent employees who are eligible for, and have been approved to, work a flexible work schedule can earn credit hours. Employees must notify their Employer in writing of their participation in this program.

**Section 3:** General Rules. The following provisions will apply for the use of credit hours at the Agency:

- A. With prior approval of the Employer, an employee may work a maximum of three credit hours per workday. These hours must be contiguous with the employee's tour of duty. A maximum of eight (8) credit hours may be earned on a nonworkday.
- B. An employee may use credit hours during a subsequent day, week, or pay period, with supervisory approval, to allow the employee to be absent from an equal number of hours of the employee's basic work requirement with no loss of pay.
- C. Credit hours must be earned in one-half ( $\frac{1}{2}$ ) hour increments.
- D. The work to be performed must be assigned and necessary work.
- E. Credit hours earned will be recorded on the employee's electronic time reporting system (i.e. WebTA).
- F. Credit hours are not overtime hours and, therefore, employees shall not be entitled to additional pay or compensatory time for any credit hours worked.

**Section 4:** Credit Hour Requests. Credit hours must be used in one-half ( $\frac{1}{2}$ ) hour increments. Prior approval from the Employer must be obtained before credit hours can be used. Requests to use credit hours will be made in the same manner as annual leave. Credit hours must be taken before annual leave, except in a use-or-lose situation. Requests to work credit hours and the schedule of the hours to be worked must be submitted in writing to the Employer in advance.

**Section 5:** Carry Overs. Employees may carry over into the next pay period up to twenty-four (24) credit hours. If an employee accumulates more than twenty-four (24) credit hours and does not obtain prior supervisory approval to use the time by the end of

the pay period, the excess time will be forfeited. Part-time employees may carry no more than ¼ of the hours in their biweekly basic work requirement.

**Section 6:** Exclusions, Temporary Suspensions and Program Termination. The Employer has the right to exclude from the program or temporarily suspend from the program certain positions, groups of positions or organizational elements in order to avoid adverse agency impact. The Employer may terminate the Program pursuant to the procedures set forth in 5 U.S.C. § 6131. However, the Union must be given at least thirty (30) days advanced notice and an opportunity to bargain the impact and implementation of the termination.

**Section 7:** Rescheduling of Credit Hours. Managers may reschedule the use of credit hours previously approved to meet work requirements or staffing needs, but the rescheduling shall not result in an employee forfeiting previously approved credit hours.

**Section 8:** Removal of Individual Employees from the Credit Hour Program.

- A. Any employee who fails to observe the requirements of this Article may be excluded from further participation in the Credit Hour Program.
- B. The "Leave Abuse Letter" referred to in Article 27, Section 13 of this Agreement, will include a restriction or suspension of the Credit Hour Program privilege, where appropriate, in addition to appropriate AWOL charges and/or disciplinary action. A sign-in/out requirement for all absences from the worksite may also be imposed where appropriate.

**Section 9:** Office Closings. In cases where an employee has worked credit hours before his/her normal tour of duty and has been subsequently released on administrative leave due to an office closing during that day, the credit hours will be preserved.

**Section 10:** Reimbursement for Credit Hours Earned.

- A. A full-time employee receives pay for a maximum of 24 unused credit hours at his/her current rate of basic pay when the employee is permanently no longer subject to a flexible work schedule program.
- B. A part-time employee who is no longer subject to a flexible work schedule program receives base pay for accumulated credit hours that are not in excess of ¼ of the employee's biweekly basic work requirement.

# ARTICLE 23

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## TELEWORK

### Section 1: General

This article pertains to the implementation of a Telework Program whereby eligible employees are allowed to work at a designated alternative duty station (ADS) on an episodic or regularly scheduled basis. This Article supersedes all previous telework or flexiplace MOUs and agreements between the parties. The Telework Program is governed by Federal statutes and regulations, including the Telework Enhancement Act of 2010. The Act provides a framework for agencies to better leverage technology and to maximize the use of flexible work arrangements, which will assist in recruiting Federal workers, retain valuable talent and allow the Federal government to maintain productivity. Telework must not diminish employee performance or agency operations. There are generally two types of telework available under this program: 1) Regularly Scheduled Telework (which permits employees to regularly work at an ADS for a prescribed number of days during a pay period); and 2) Episodic Telework (in which employees are permitted to telework on a temporary basis either for medical or work-related reasons).

### Section 2: Medical Telework

The Employer will allow those employees recuperating from a serious illness or medical condition to perform their duties at home on a part-time basis during each pay period, for a limited span of time as determined by the nature of the illness. This will only be granted if the position is such that the duties can be performed off site and the technology is readily available to perform the duties without an unreasonable increase in cost or negative impact on productivity of the work unit. The request to use this provision must be made in writing to the Staff Director or, in the case of employees in the Office of the General Counsel, to the General Counsel. Since medical telework is meant to be temporary, it is episodic by nature. An employee's approval for medical telework is not a determination that he/she is a qualified individual with a disability under the Rehabilitation Act. Nor is it meant to be a replacement of the reasonable accommodation process for permanently or seriously disabled employees. Such employees are required to go through the Office of Equal Employment Opportunity (OEEEO) in order to be adjudged a qualified individual with a disability and/or to seek a reasonable accommodation.<sup>1</sup> Medical documentation submitted for medical telework will be kept separate from the employee's official personnel file (OPF).

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<sup>1</sup> Nothing in this provision prohibits the agency from offering medical telework as a reasonable accommodation once the employee has gone through the OEEEO process.

### **Section 3: Position Eligibility**

Telework may not be suitable for all types of positions. Accordingly, telework eligibility is first determined by the employee's position. Thereafter, each employee whose position is deemed eligible must then satisfy the employee eligibility criteria. Supervisors will notify telework applicants of their eligibility for the program.

Several factors may be considered when determining whether a bargaining unit position may be eligible for telework. These include:

- A. Whether the employee's duties require face-to-face contact on a daily basis;
- B. Whether the employee's duties, on a daily basis, require direct handling of secure materials determined to be inappropriate for telework by the Chief Privacy Officers;
- C. Whether the employee's duties, on a daily basis, involve on-site activities that cannot be handled remotely or at an alternate worksite. For example, the Agency should consider:
  - 1. whether some portion of the Employee's work is portable and does not depend on the employee being physically present at the official duty station (ODS). Additionally, the Agency should consider;
  - 2. whether the employee's duties, on a daily basis, require the use of special equipment or technology, or access to materials not available at remote worksites (e.g., hardcopy reference manuals, high volume photo copying and scanning, restricted IT systems) to accomplish telework tasks;
- D. Whether the performance of work at the ADS worksite will adversely affect the workload of other employees.

### **Section 4: Employee Eligibility**

Once the employee's position has been identified as telework-eligible, the requesting employee must be deemed eligible for the program by his/her supervisor.

- A. The employee eligibility criteria are as follows:
  - 1. Employees receiving an overall performance rating of 4.0 ("Exceeds Requirements") rating on their most recent performance appraisal are eligible. In addition, employees are eligible if they have received a rating of 3.5 to 3.99 on their most recent performance appraisal, with no score less than "Acceptable" on any critical element for the employee's position.

2. Employees who have not received a performance appraisal for their position may be required to serve at least 90 days in their current position before being eligible for telework. After 90 days in the position the employee may be eligible for the telework program if the supervisor informally assesses the employee as performing at a level consistent with the standard of paragraph (A)(1), above. If the supervisor determines that the employee's performance does not meet this level, then the supervisor will deny the application and list as the reason for the denial the applicant's failure to perform at the level required for participation in the telework program.
3. At the discretion of the Agency, an employee who transfers or is promoted into a new position and who previously was participating is allowed to continue participating in the telework program, even if the employee has not received a performance appraisal in the new position. Continued participation in the telework program may be allowed in circumstances where the employee has a proven, successful record of working independently from an alternative duty station, and where the employee's supervisor is satisfied the employee's continued participation in the telework program is likely to be successful.

B. Employees are deemed ineligible for telework if:

1. The employee was under a Performance Improvement Plan ("PIP") during the 12 month period before he/she applied to the telework program.
2. The employee has been Officially Disciplined for being absent without leave (AWOL) for more than five days in any calendar year.
3. During the year prior to the employee's application to participate in telework program, the employee was subject to disciplinary or adverse action for infractions that reasonably would lead the agency to question the employee's ability to work successfully from an alternative duty station.
4. The employee has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.
5. The employee is under a leave restriction when the employee applies to participate in the telework program, or while the employee is participating, in the telework program.

## Section 5: Telework Rules

### A. Rules Applicable to All Telework Participants

1. Employee participation is voluntary and subject to the Employer's approval.
2. Work projects that are suitable for the telework program are those that may be performed at least as efficiently at the ADS as at the ODS.
3. Employees must have a safe and adequate work site at home that provides the necessary level of security and protection for government property. Employees will complete a self-certification safety checklist attached to the Telework Program application. The employee must work only at the approved ADS. If the employee cannot work at the approved ADS, he/she must report for duty at the office or request leave. When an employee knows in advance of a situation that would preclude working at the ADS leave should be scheduled or the employee should arrange to work at the ODS. If, however, an unexpected interruption occurs while the employee is working at the approved ADS, the employee should immediately notify his/her supervisor to seek guidance.
4. The Employer may conduct periodic inspections of the ADS during the employee's normal working hours to ensure that it conforms to safety standards and other specifications. Any inspection will occur only on days when the employee is working at the ADS, and after reasonable advance notice, usually not less than 48 hours. The Employer will notify the employee as to the date and approximate time of the arrival, the number of management officials coming to his or her home, the estimated duration of the inspection and other appropriate information. The Employer will use the Self-Certification Safety Checklist as the basis for conducting these inspections.
5. The Employer reserves the right to visit the ADS without advance notice if the Employer has a reasonable suspicion there is a potential material violation of this Article or other material employee misconduct at the ADS. Under these circumstances, the employee shall be advised of the employee's Weingarten rights to Union representation prior to the beginning of the inspection. The employee shall be given an opportunity to exercise his/her Weingarten rights during such unannounced inspection.
6. Telework at locations other than the employee's approved ADS may be permitted with advance approval from the employee's immediate supervisor and the FEC's Chief Information Security Officer (CISO) via email.

7. Employees must complete the Employer-required training on telework before they can receive approval to participate in the program. A copy of the training completion certification must be submitted with the telework application. Employees must participate in annual refresher training, to be completed in October, in order to maintain their eligibility.
8. Each employee who wishes to participate in the telework program must complete and sign the written telework agreement and forward it to his/her supervisor.
9. Employees are expected to adhere to their normal hours of duty for days worked at their ADS. Teleworkers are not permitted to split their work day (i.e., to work several hours in the morning, stop working for several hours, and then resume working for the remainder of their shift.) Any breaks during the work day or other absence from the ADS, other than for the employee's normal lunch break or two 15-minute rest periods, must be approved in advance and accounted for as annual leave, sick leave, or other approved type of leave.
10. Teleworking employees may choose to telework for a portion of the day and then commute to the ODS for the remainder of the day with supervisory approval. Under these circumstances, the time required to commute from the ADS to the official worksite may not be counted as duty time. If an employee is scheduled to telework for the day, but during work hours is asked by his/her supervisor to return to the office, the employee's commute time will be counted as duty time.
11. When the FEC dismisses employees early due to a holiday (communicated to all FEC staff through FEC email), employees who are working at their ADS are excused at the departure time indicated in the communication.
12. When OPM or the FEC announces a delayed arrival, dismisses employees early or closes its offices because of an emergency or other exigency (such as inclement weather, street closures, building problems, etc.), employees who are on scheduled telework for the day of the announcement are not excused from work and are expected to start work on-time and remain on duty during work hours at their ADS unless otherwise notified. They are however permitted to take leave as permitted by OPM on that day.
13. Employees may not use duty time for any purposes other than official duties. For example, telework is not a substitute for dependent care, such as child care or elder care, and may not be used to provide dependent care during working hours. Nor may teleworking employees use duty time to operate a business.
14. The Employer's reasonable discretion governs which Employer documents may be taken to the ADS. Employees will protect government records subject

to the Privacy Act from unauthorized disclosure or damage at the ADS and will comply with the privacy requirements set forth in the Privacy Act of 1974, Public Law No. 93-579, codified at 5 U.S.C. § 552a, as well as the confidentiality requirements of the Federal Election Campaign Act. Employees must comply with all FEC privacy and IT security procedures and policies to protect government information and maintain data integrity.

15. Equipment Required for Telework

- a. Employees must be available by telephone and e-mail throughout normal working hours and may be contacted by the Employer on an as-needed basis. The employee will immediately notify his or her supervisor of any change in the location or telephone number of the ADS. When employees are working at their ADS, they will check their office voicemail and e-mail messages on a regular basis.
- b. Program participants will use Agency approved telecommunication equipment for all business telephone calls.

16. Certain employees participating in the telework program may be required to have the capability to send and receive hard copy documents, either as a scanned copy or as a faxed copy, at their ADS or at an alternate location. In either case, the employee will provide the scanning or fax capability at his or her own expense.

17. Employees who share a household with other occupants must locate the ADS in a room that can be locked from the outside or must have a locked file cabinet or other locked container to minimize unauthorized access to Employer records and files.

18. The Employer may, at its discretion, place government-owned computers and telecommunications equipment in the ADS, but the Employer retains ownership and control of hardware, software, data ports, and data.

19. The employee will use an Employer-issued laptop for all ADS computer related work.

20. Employees are responsible for and must maintain proper control of any government-owned equipment as required by the Employer's applicable policies, procedures and directives. The equipment is to be used only for authorized purposes. If any of the government-owned equipment is stolen, damaged, or lost, the employee must cooperate in any investigation conducted by the Employer or police authorities.

21. Employees working under a telework program arrangement must adhere to established rules, practices, procedures (including the Labor Management Agreement), and regulations governing time, attendance, leave, travel,

overtime, compensatory time, and credit hours. Employees are expected to adhere to their normal hours of duty for days worked at their ADS. Any change of duty hours for work at the ADS must be made in accordance with Article 22 of the Labor Management Agreement.

22. An employee who participates in the telework program retains his or her eligibility for other programs, such as the Alternative Work Schedules Program and the Credit Hours Program. Participation also does not impinge on the employee's ability to take annual and sick leave as provided under the Labor Management Agreement. For example, Episodic Telework may be approved for less than a full work day in conjunction with the employee's taking sick or annual leave for the rest of the day.
23. The ODS of employees participating in the telework program will continue to be their regular offices in the Employer's headquarters building, not the ADS. Entitlement to locality-based pay, special salary rates, travel allowances, and relocation expenses is based on the ODS. The hours of work at the ADS may, however, reduce or eliminate the transit subsidy to which an employee would otherwise be entitled.
24. Employees participating in the telework program shall return to the ODS as soon as possible when the Employer requests them to do so. The Employer will give the employees as much advance notice as possible of the need to return to the ODS. The travel time spent traveling from the employee's ADS location to official duty station will be considered duty time.
25. Normally, when the Employer dismisses employees or closes its offices because of an emergency or other reason, employees working at their ADS are not excused from working their normal duty hours unless notified otherwise.
26. An employee participating in the telework program shall promptly inform his or her supervisor whenever any problems (such as equipment failure, power outages, and telecommunications difficulties) arise that adversely affect the employee's ADS or his or her ability to work at the ADS.
27. An employee's violation of these rules and policies may be a basis for removal of the employee from the telework program and for appropriate disciplinary or adverse action.
28. Employees must agree to abide by the terms and conditions of this Article and must sign and abide by the terms and conditions of the Telework Program Application.
29. Each participant must obtain and pay for a high-speed Internet connection at his or her ADS, at his/her own expense.

## B. Rules Specifically Applicable to Regularly Scheduled Telework

1. Regularly Scheduled Telework may be scheduled for up two (2) days per week.
2. Employees participating in Regularly Scheduled Telework who are required or advised to come to the ODS on their telework day(s) may work with their supervisor to try and substitute another day or other days as their telework day(s) during that pay period. However, the supervisor reserves the right to require that the employee come in during his/her telework day if a substitution is not practical or feasible.
3. An employee's request for Regularly Scheduled Telework may be denied based on the business need to maintain minimum coverage requirements.
4. As appropriate, an employee's regular telework schedule can be expanded through the approval of additional episodic telework days.

## C. Rules Specifically Applicable to Episodic Telework

1. An employee's supervisor, in consultation with the employee, will decide the appropriate duration of an Episodic Telework arrangement. The decision will take into account the nature of the particular tasks or projects, the employee's need for uninterrupted concentration, and the Employer's administrative needs.
2. With the supervisor's approval, an employee who participates in Regular Telework may also participate in an Episodic Telework arrangement during a week or pay period when the employee is on his or her Regularly Scheduled Telework day(s).
3. Episodic Telework may be approved to allow employees to work at the ADS on days when the Commission is operating on an "unscheduled leave" basis because of inclement weather or other circumstances. Employees are encouraged to seek supervisory approval prior to the day the "unscheduled leave" policy is invoked.
4. The employee must have applied and be pre-approved for episodic telework prior to working from the ADS.

#### D. Rules for Unscheduled Telework.

When OPM announces the operating status of Federal government agencies in the Washington, D.C. metropolitan area as "OPEN" and employees have the "OPTION for UNSCHEDULED LEAVE OR UNSCHEDULED TELEWORK", approved Telework employees should adhere to the following procedures based on the type of Telework for which the employee is approved.

1. Participants of the Regularly Scheduled Telework Program may: (a) commute to the ODS, (b) take leave or (c) notify their supervisor of their intention to perform unscheduled telework via telephone or email (assuming it is not their regular telework day). Such employees must request to take leave or participate in unscheduled telework in accordance with Article 27.
2. Employees approved for Episodic Telework may: (a) commute to the ODS, (b) take leave, or (c) request approval to episodically telework following the procedures for requesting Episodic Telework as outlined in this agreement. Employees electing to take leave or episodic telework must request to do so with their supervisor in accordance with Article 27.

#### E. Rules for Emergency Telework

In the event of an emergency, a Continuity of Operations plan (COOP) may be invoked depending upon the extent of the emergency.

### Section 6: Telework Program Applications

- A. Employees who wish to participate in the telework program must apply during the initial application period or during one of the three open season periods provided for alternative work schedules (i.e. May, August, or December). See Article 22, Part A, Section 5.B.
  1. *Initial Application Period (For New Telework Applicants)*. An eligible employee who wishes to participate in the telework program must submit the application materials described in this section to his or her immediate supervisor no later than 60 calendar days after the effective date of this Agreement. Employees who are on extended leave during the initial application period may submit an application within 30 calendar days of the end of that leave. Employees participating in the Flexiplace Program at the time of this agreement, must recertify their telework status.
  2. *Three Yearly Application Periods*. An employee who wishes to participate in the telework program may submit application materials described in this section to his or her immediate supervisor during the alternative work schedules open season period. Employees currently participating in a previously approved *telework program (i.e. Flexiplace)* who wish to change

their telework arrangement may submit an application for changes during these same periods.

3. Employees who wish to participate in a Regular Telework arrangement must make this request in the designated section of the during the approved application times established above, and must specify on the Application the preferred day or days and times for a Regular Telework arrangement.
  4. Employees who wish to participate in an Episodic Telework arrangement must make this request in the designated section of the application during the approved application times established above. Employees participating in an Episodic Telework arrangement will request and receive approval, via email, from their supervisor for each episodic assignment. In determining whether to approve a particular Episodic Telework assignment, the Employer may consider factors such as (a) the nature and content of the work, (b) the procedures by which the work is to be performed, (c) an employee's work schedule, (d) the availability of equipment and technologies that would make the telework work practical in a given circumstance, and (e) office coverage.
- B. Employees already participating in an approved Regular Telework arrangement who wish to make changes to that arrangement during one of the three yearly application periods will make this request in the designated section of the agreement.
  - C. All eligible employees must participate in a training session (described in Section 5.A above) and sign a document indicating they have done so and will abide by all requirements of the telework program prior to applying for the telework program for the first time. Employees who are making changes to their Regular Telework are not required to participate in another training session.
  - D. Within 15 calendar days of the close of the application period, the Employer will notify the applicant whether the application has been approved or denied. The Employer will also respond to an email request for Episodic Telework as soon as practicable given the particular timing of the work to be completed in the request. The request must be approved before the employee begins to work at the ADS.
  - E. If the Employer disapproves of any part of an employee's Application or an assignment request, the Employer will furnish the employee with the reason or reasons for denial in writing.

## **Section 7: Participant's Termination or Suspension from the Telework Program**

- A. The Employer may terminate or suspend an employee's participation in the telework program or a particular Telework assignment for reasons including but not limited to failure to meet and maintain eligibility requirements during the program, diminished productivity, or the employee's failure to adhere to this Article.
  - 1. The employee normally will receive three workdays advance written notice of a decision. The notice will include an explanation for the decision.
  - 2. Supervisors will make an effort to counsel employees about specific problems before terminating their participation in the telework program or a particular telework assignment. If counseling occurs, the Employer may terminate the employee's participation in the telework program assignment at anytime thereafter for the reason specifically counseled or any other applicable reason.
  - 3. Employees may reapply 12 months after his/her termination from the program. Suspended employees may reapply for the program after the suspension period is complete.
- B. For good cause, the Employer may exclude or temporarily suspend from the telework program certain persons, positions, groups of positions, or organizational elements. Prior to excluding or suspending positions or employees from the telework program, the Employer will notify and bargain with NTEU to the extent required by law.
- C. An employee may withdraw from the telework program after written notice to his or her supervisor. Once an employee has withdrawn from the telework program he or she may not participate in it unless the employee applies during a future open season period and the employee's application is approved.

## **Section 8: Liabilities and Responsibilities**

- A. The Employer will not be responsible or liable for:
  - 1. Damage to an employee's real or personal property when the employee is performing official duties or while the employee is using governmental equipment at the ADS, except to the extent required by applicable law.
  - 2. Accident or injury occurring at the ADS while the employee is performing official duties, except to the extent required by the Federal Employee's

Compensation Act. Employees must bring to the Employer's immediate attention any accident or injury occurring while the employee is performing official duties at the ADS.

3. Operating costs, home maintenance, or any other incidental costs (for example, utilities) associated with the use of a private residence as an ADS.
  - B. The Employer will be responsible for the maintenance and repair of all government-owned equipment placed at the ADS. If employees can feasibly do so, they will bring any malfunctioning government equipment to their ODS for repair.
  - C. Employees who participate in the Telework Program and who participate in the Transit Subsidy Program are responsible for adjusting their monthly transit subsidy, as applicable in accordance with FEC policies.
  - D. Employees who participate in the Telework Program must record their telework hours in the FEC's electronic time and attendance database system (WebTA).

# ARTICLE 24

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## OVERTIME

### Section 1: Definitions

The Employer shall categorize employees as exempt or nonexempt in accordance with the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, *et seq.* and applicable regulations in 5 CFR Part 551.

- A. "FLSA Nonexempt" employees are those individuals who are covered by the minimum wage and overtime provisions of the FLSA.
- B. "FLSA Exempt" employees are those individuals who are not covered by the wage and overtime provisions of the FLSA. However, such employees may be subject to the overtime provisions prescribed in 5 CFR Part 550 of the OPM regulations. Employees engaged in the professional practice of law are considered FLSA Exempt employees regardless of salary.

**Section 2:** Overtime hours generally means work in excess of eight (8) hours in a day (or in excess of the regularly scheduled workday for employees in an alternative work schedule), or in excess of 40 hours in an administrative workweek. However, for an FLSA Exempt employee whose pay exceeds a GS-10/Step 1, or who performs professional, technical, engineering or scientific activities, overtime hours mean work performed in excess of 40 hours in an administrative workweek. While the Employer reserves the right to provide employees notice that no overtime work may be performed by either exempt or non-exempt employees, nothing in this article precludes or impairs the *Fair Labor Standards Act* (FLSA) exempt employees from filing a claim for ordered or approved overtime or FLSA non-exempt employees from filing a claim for "suffered or permitted" overtime.

- A. For FLSA Nonexempt employees, overtime work is work that is: officially ordered, approved, suffered, or permitted under the *Fair Labor Standards Act* (FLSA). Such work must be actually performed by the employee in order to receive overtime compensation. Suffered or permitted work is defined as work performed by an employee for the benefit of the agency, whether requested or not, provided the employee's supervisor knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed.
- B. For FLSA Exempt employees, overtime work is work that is: 1) officially ordered or approved in writing; and 2) performed by the employee. For exempt employees, work in excess of the employee's workday that is completed without

prior approval from one's supervisor, will not be compensated as overtime. FLSA Exempt employees whose basic rate of pay exceeds a GS-10/Step 10, will not receive overtime pay for approved overtime work, rather they shall be compensated in compensatory time for such work.

- C. Computation of overtime pay shall be made in accordance with 5 CFR Part 550 (FLSA Exempt), 5 CFR Part 551 (FLSA Nonexempt), and Section 5542 of the Fair Labor Standards Act.

**Section 3:** The employees who are required or permitted by the Employer to work overtime will be compensated in accordance with applicable laws and regulations. The Employer will distribute annually a memorandum to all employees discussing such laws and regulations.

**Section 4:** The Employer will to the extent practicable distribute overtime equitably among qualified bargaining unit employees. In making this determination, the Agency may consider: (1) the work unit where the work assignment can be completed; (2) specific knowledge or experience needed; and (3) the nature of the assignment to be performed. Where the nature of a particular task does not lend itself to equitable distribution among qualified employees, the Employer will to the extent practicable accomplish this equitable distribution over the long run through the appropriate distribution of assignments. Where an employee has been offered an overtime opportunity and turns that opportunity down, he/she will be considered to have served or received that amount of overtime for purposes of equitable distribution but not for purposes of compensation thereof.

**Section 5:** To the extent practicable, the Employer will staff overtime assignments with volunteers, unless there are no qualified volunteers available or due to the nature of the task this is impracticable (e.g., a case assigned over a long term to one employee). An employee will, upon request, be released from an overtime assignment if the employee finds a qualified replacement who is available and willing to work.

In cases of involuntary overtime, if practicable, the Employer will notify the employee(s) at least three (3) full work days in advance of the scheduling of the involuntary overtime assignment. Furthermore, when ordering involuntary overtime, the Employer will consider significant personal hardships and assist in finding a qualified replacement.

**Section 6:** The Employer will seek to avoid overtime assignments that result in employees working excessively long periods without a day off.

**Section 7:** Employees may be entitled to overtime when engaged in official government travel. (See Article 33, Section 10 of this Agreement.) When the Employer authorizes in advance an employee to perform work while traveling and outside normal duty hours, the actual time spent performing the work is compensable and will entitle the employee to overtime pay, compensatory time off and/or credit hours, as appropriate.

**Section 8:** In accordance with 5 USC 7114 and the Privacy Act, upon request, the Employer will make available to the Union, current records of overtime assignments of employees to aid in resolving individual claims of unfair and inequitable distribution.

# ARTICLE 25

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## COMPENSATORY TIME

**Section 1:** All employees may request compensatory time in lieu of overtime pay for time spent engaging in irregular or occasional overtime work, as provided by 29 U.S.C. § 207 and 5 CFR Parts 550 and 551. Employees on flexible work schedules may also request compensatory time for regularly scheduled overtime work.

Compensatory time will be approved in a fair and equitable manner. At times when the Employer offers compensatory time to multiple employees in a work unit, this process will be conducted in a fair and equitable manner. All compensatory time denials with explanations will be submitted in writing to the employee within two (2) days of the request.

**Section 2:** Employees eligible to receive compensatory time must use accrued compensatory time within twenty-six (26) pay periods after the time it was earned. Employees will be responsible for tracking their compensatory time. If compensatory time is not used within this time period, it will be (i) paid out for non-exempt employees (i.e., employees entitled to overtime pay under the FLSA) and (ii) forfeited for exempt employees (i.e., employees not entitled to overtime pay under the FLSA), unless the failure to take the time off is due to an exigency of the service beyond the employee's control. In such exigent circumstances, the Employer will provide the employee with overtime payment for the unused compensatory time.

**Section 3:** The employee is responsible for seeking approval of compensatory time for overtime work from his/her supervisor. Compensatory time may be approved in accordance with the following guidelines:

- A. If the employee's rate of basic pay exceeds the rate of a GS-10, Step 10 the Employee may be compensated with compensatory time only, not overtime pay, in accordance with applicable laws and regulations.
- B. If the employee's rate of basic pay is equal to or less than that of a GS-10, Step 10, the employee may request compensatory time off in lieu of overtime payment for time spent performing overtime work. For such employees (GS-10/Step 10 or below), the Employer cannot require that they be compensated for overtime work with compensatory time.

**Section 4:** In cases where the employee has worked approved compensatory time before his or her normal tour of duty, and has been subsequently released on administrative leave due to office closing on that day, the compensatory time earned will be preserved.

#### **Section 5: Compensatory Time for Religious Observances**

Employees (including those paid at the statutory maximum) are permitted to work compensatory overtime for the purpose of taking time off for religious observances. Such overtime may be worked before or after the compensatory time off, but must be worked within the same pay period as the time off when possible.

An employee will be allowed to accumulate only the number of hours of compensatory time needed to make up for the previous or anticipated absences from work for religious observances.

Compensatory time worked for religious observances does not create any entitlement to premium pay (including overtime pay). If an employee is separated or transferred before using the time set aside for religious observances, any hours not used must be paid at the employee's rate of basic pay in effect when the extra hours of work were performed.

#### **Section 6: Compensatory Time for Travel**

In accordance with 5 CFR 550.112(g), employees may request compensatory time for time spent in travel away from his/her official duty station, when either:

- A. It is within his regularly scheduled administrative workweek, including regular overtime work; or
- B. The travel—
  - 1. Involves the performance of actual work while traveling;
  - 2. Is incident to travel that involves the performance of work while traveling;
  - 3. Is carried out under such arduous and unusual conditions that the travel is inseparable from work; or
  - 4. Results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of the employee to his or her official- duty station.

## ARTICLE 26

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### HOLIDAYS

**Section 1:** Where the Employer requires the services of employees on an established holiday, the Employer will determine which employee(s) are qualified for those services. The employee assigned to a specific matter may be deemed by management as the only person qualified to work on that matter. If there are multiple qualified employees, the Employer will seek volunteers for the work amongst those qualified employees. If there are too many volunteers, then the Employer will select the employee(s) based on FEC seniority (i.e. EOD). If there are not enough volunteers, qualified employees will be chosen for holiday work on an inverse seniority basis. This procedure does not apply where an entire work unit is required to work on a holiday. Should an employee be involuntarily assigned to work on an established holiday, that employee may, upon request, be released from such assignment if the employee finds a qualified replacement who is available and willing to work.

**Section 2:** To minimize the adverse repercussions of assigning employees to work on holidays, the Employer will strive to provide at least five (5) work days advance notice to the affected employee(s). The Employer will, to the extent possible, rotate compulsory holiday assignments among equally qualified and available employees of a given work group.

# ARTICLE 27

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## LEAVE

### Section 1: Definitions

- A. For the purpose of this Article, "Family Member" means the following relatives of the employee:
  - 1. spouse, or life partner, and parents thereof;
  - 2. children (including adopted, foster, and step children and spouses thereof);
  - 3. parents or stepparents;
  - 4. brothers and sisters, and spouses thereof; and
  - 5. any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- B. "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.
- C. "Serious Medical Condition: has the meaning given that term in 5 C.F.R. § 630.1202.

### Section 2: Annual Leave

- A. Annual leave is provided and used for two general purposes: 1) to allow every employee an annual vacation period of extended leave for rest and recreation; and, 2) to provide periods of time off for personal or emergency purposes.
- B. Scheduling of Annual Leave

The Employer shall make a reasonable effort to grant employee requests for annual leave consistent with workload and staffing needs.

When annual leave is denied, the Employer will provide a statement of the reason(s) for the denial of the leave request.

Failure to adhere to the procedures of this Article when requesting annual leave shall not, in and of itself, be grounds for denial of an otherwise legitimate request.

However, failure to properly request leave may be grounds for disciplinary action. Employees are reminded, however, that compliance with these procedures, including reasonable advance notice, will provide the Employer with reasonable time to plan for employee absences.

### **Section 3: Crediting of Annual Leave**

Employees whose appointments are limited to less than ninety (90) days do not earn annual leave. If such an appointment is extended or converted without a break in service past ninety (90) days, annual leave will be credited retroactive to the date of initial appointment.

### **Section 4: Accruing Annual Leave**

- A. Full Biweekly Pay Periods. To earn annual leave, an employee must be employed during a full biweekly period (i.e., under an appointment on all days falling within the pay period, exclusive of holidays and non-workdays).
- B. Accrual Reduction Because of Non-Pay Absence. When full-time employees are in a non-pay status for eighty (80) hours, they earn no leave that pay period. Each time another eighty (80) hours of LWOP is accumulated, the employee loses leave accruals for the pay period in which this total is reached. An employee who is non-pay status for the entire year earns no leave.

### **Section 5: Maximum Accumulation**

In accordance with 5 USC 6304, employees may accumulate annual leave up to a maximum of 240 hours as of the end of the pay year. Employees are responsible for the planning and effective scheduling of annual leave. Advance scheduling will avoid situations where employees approach the end of the leave year with a significant amount of annual leave that must be used or forfeited. Employees have an obligation to request annual leave in a timely manner. Leave in excess of the maximum carryover will be forfeited if it is not used or donated before the end of the leave year.

### **Section 6: Leave Requesting Procedures**

- A. Annual leave requests shall not be denied as a form of disciplinary action. This does not restrict the Employer's right to place an employee on leave restriction resulting from leave abuse as provided in Section 13 of this Article.
- B. Annual leave shall be charged in increments of one-half ( $\frac{1}{2}$ ) hour. The leave period begins when the WebTA leave request, as approved by the Employer, says it begins.

- C. All requests by bargaining unit employees to utilize annual leave shall be made utilizing WebTA or any electronic accounting software program utilized by the Employer.
- D. Requests for leave shall normally be made in advance equal to the number of leave days desired. For example, leave for four (4) days should normally be requested at least four (4) days in advance. Requests for leave of eight (8) hours or less shall be made reasonably in advance of the leave period requested.
- E. Requests shall be promptly considered by the Employer and promptly answered in writing (via WebTA), but no later than two (2) work days after the request has been received, except in situations where leave requests cannot be responded to expeditiously (e.g., workload or coverage issues may affect the ability to quickly approve or disapprove leave). Employees and supervisors are encouraged to discuss pending leave requests.
- F. Employees may change annual leave charges to sick leave where sick leave is appropriate.

**Section 7: Advanced Annual Leave**

- A. Employees with permanent appointments will be given advanced leave when:
  - 1. they make a prior written request for the advance leave utilizing the WebTA leave request system, when practicable;
  - 2. they are eligible to earn annual leave;
  - 3. the request does not exceed the amount of annual leave they will accrue during the remainder of the leave year;
  - 4. they demonstrate an essential, substantive need for the leave;
  - 5. the absence will not create a workload problem; and
  - 6. they have reasonably demonstrated the ability to accrue a positive annual leave balance.
- B. When the maximum amount of annual leave has been advanced, no more than eighty (80) hours of LWOP will be approved for the duration of the leave year (notwithstanding receiving other statutory entitlements).
- C. If the request is for medical reasons, the requirements of Section 11 below will also apply.

## **Section 8: Emergency Annual Leave**

When emergencies arise requiring the use of leave, annual leave shall be requested as follows:

- A. If the emergency arises while the employee is at work, the employee shall notify the Employer (i.e. someone in the employee's chain of command) of the nature of the emergency and the anticipated extent of his or her absence, and seek the Employer's approval for annual leave, using the WebTA when practicable.
- B. If the emergency arises when the employee is not at work, and the need to take leave would prevent reporting to work as scheduled, the employee must notify the Employer at the earliest practicable opportunity, submitting any necessary forms upon returning to work.
- C. If an emergency extends beyond the period for which leave was originally approved, the employee shall, when practicable, notify the Employer, requesting additional leave, consistent with this Article.

## **Section 9: Sick Leave.**

The below cited Sections of the *Code of Federal Regulations* (CFR) pertaining to Sick Leave will be made available to employees in the FEC Personnel Shared folder (under "Leave").

- A. Sick leave shall be administered in accordance with 5 C.F.R. § 630.401 through § 630.409.
- B. Earning Rate for Full-Time Employees. Employees will accrue sick leave in accordance with 5 USC 6307.
- C. Using Sick Leave. In accordance with 5 USC Chapter 63 (Sections 6307-6312) and 5 CFR Part 630, employees are entitled to use earned sick leave (subject to the limitations listed below) for:
  - 1. medical, dental, or optical examination or treatment
  - 2. incapacitation in the performance of their duties by physical or mental illness, injury, pregnancy, or childbirth;
  - 3. providing care of a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental or optical examination or treatment;
  - 4. making arrangements necessitated by the death of a family member or attends the funeral of a family member;

5. providing care of a family member with a serious health condition;
6. an absence when, as determined by the health authorities having jurisdiction or by a health care provider, they may jeopardize the health of others by their presence on the job because of exposure to a communicable disease; or
7. the absences relating to the adoption of a child, including, but not limited to, appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel.

D. Sick Leave Granted. Sick leave will be accrued and granted in accordance with 5 CFR 630.401(b – d).

E. Requesting Sick Leave

1. When practicable, sick leave requests for non-emergency medical, dental or optical examinations, operations, or treatments should be submitted using WebTA at least three (3) days in advance to the Employer. Such requests, when practicable, will be approved within twenty-four (24) hours unless that employee's absence would create a workload disruption.
2. Notice of unanticipated sick leave will be given by the employee to the Employer as soon as practicable, and in no event later than 11:00 a.m. on the first (1st) day of absence. If the degree of illness or injury prohibits compliance with this time limit, the employee will report the absence as soon as practicable.
3. Employees may be required to furnish a medical certificate to substantiate a request for approval of sick leave if the sick leave exceeds three (3) consecutive work days. The Employer shall not contact the employee's doctor to obtain or discuss confidential medical information without the express written authorization of the employee.
4. Employees will not be required to submit a medical certificate to substantiate a request for approval of sick leave for sick leave periods of three (3) consecutive days or less, or when an employee suffers from a chronic condition which does not necessarily require medical treatment although absence from work may be necessary and the employee has furnished medical certification of the chronic condition, except pursuant to Section 13 of this Article, or unless the Employer has reasonable grounds to conclude that the request is for reasons other than those stated above in Subsection A.
5. Submission of a medical certification shall not be considered a notice that the employee is a qualified individual with a disability under the Rehabilitation Act. Similarly, the approval of sick leave shall not be considered an admission by the agency that the employee is a qualified individual with a disability.

6. Employees who, because of illness, are released from duty, 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 E(3) and (4) above.
7. An approved absence which would otherwise be chargeable to sick leave may be chargeable to leave without pay at the option of the employee only when annual or sick leave credits are exhausted. An employee who anticipates a continued illness or disability beyond thirty (30) days may charge the approved absence for a particular pay period to any combination of sick leave, annual leave or leave without pay in order to provide for optimal income during the period of illness or disability.

### **Section 10: Advanced Sick Leave**

The advancement of sick leave will be governed by 5 CFR 630.401 *et seq.* and the following provisions:

- A. An advance of sick leave may be made to an employee with an insufficient sick leave balance and no leave restriction requirements (i.e. employees with a leave abuse letter). The employee must submit a written request for the advance sick leave through the employee's supervisory chain, and should include the amount of leave requested and why the advance sick leave is needed.
- B. An employee is eligible for advance sick leave when:
  1. The employee has an insufficient sick leave balance
  2. There is a reasonable expectation that the employee will return to duty after the leave.
  3. The request is accompanied by medical certification and does not exceed thirty (30) days.
  4. The leave is being requested for one of the purposes listed in 5 CFR 630.402 (e.g., medical incapacity or care of an incapacitated family member).
- C. Advanced sick leave may be granted in the amounts up to 240 hours (30 days), or 104 hours (13 days), in accordance with 5 CFR § 630.402. The amount of advanced leave available for part time employees must be prorated based on their regularly scheduled workweeks. The total advanced sick leave must not exceed 30 days, or 240 hours, at any one time.
- D. Advanced sick leave may be granted regardless of whether the employee has annual leave to his/her credit.

## Section 11: Leave Without Pay (LWOP)

- A. Leave without pay is an approved absence from duty in a non-pay status. An employee may request leave without pay even though he/she may have annual or sick leave to his/her credit.
- B. All requests for LWOP shall be made using WebTA (when practicable) to the employee's immediate supervisor for approval, pursuant to applicable regulations.
- C. The Employer agrees to grant extended LWOP for any employee elected to a position of national officer of the National Treasury Employees Union for the purpose of serving full-time in the elective position. Such leave will be for a period concurrent with the term of office of the elected official and will automatically be renewed by the Employer upon notification in writing from the elected official that he or she has been re-elected and wishes to continue in a LWOP status.
- D. The Employer agrees to grant extended LWOP for one (1) employee for the purpose of serving in full-time appointive positions for the National Treasury Employees Union. The term of LWOP will be no more than two (2) years. All affected employees will have their LWOP renewed for one (1) additional two-year period upon request.
- E. The Employer will accomplish the following upon termination of the leave:
  - 1. to the extent practicable, place a returning employee in the position (same grade, series, group) he or she held at the time the leave began; or
  - 2. failing the above, the Employer will place the employee in a like position and grade for which he or she is qualified.
- F. Employees are entitled to leave without pay in accordance with the *Family and Medical Leave Act of 1993 (FMLA)* (Section 630.1201 through 630.1211, Subpart L of 5 C.F.R., and Section 6381 through 6387 of Title 5 of the United States Code). This includes military family leave as provided for under 5 U.S.C. § 6382 of the FMLA. Requests for leave without pay must be supported by evidence that is administratively acceptable to the Agency.
- G. Additional LWOP Opportunities. An employee may request up to 24 hours of LWOP each year for:
  - 1. School and Early Childhood Educational Activities:
    - a. parent-teacher conferences or meetings with child-care providers;
    - b. new school or child-care facility interviews; or

- c. volunteer activities supporting the child's educational advancement.
- 2. Routine Family Medical Purposes: allowing parents to accompany children to routine medical, dental or optical appointments.

**Section 12: Absence Without Leave (AWOL)**

- A. AWOL is non-pay status when an employee is not approved by the Employer to be absent from duty.
- B. AWOL in and of itself is not considered to be a disciplinary action. However, repeated instances may serve as a basis for disciplinary action.
- C. A Employer may, on a case-by-case basis, place an employee on AWOL when the employee's absence from duty is not authorized. The AWOL may later be changed to an approved leave status when appropriate.

**Section 13: Leave Abuse**

- A. Leave abuse occurs when an employee repeatedly fails to follow the procedures for requesting leave, without reasonable justification, when leave has been used contrary to any statute or regulation (e.g., using sick leave for annual leave purposes), and/or when the employee's leave usage establishes a pattern that regularly disrupts work. The Employer may issue a "Leave Abuse Letter" to employee(s) for leave abuse.
- B. If issued, the letter will specify the period covered, not to exceed ninety (90) days. The letter will set forth the following restrictions based on the kind of leave abused:
  - 1. Non-emergency annual leave or LWOP requests will be denied, unless submitted in writing at least one (1) week in advance.
  - 2. Emergency annual leave or LWOP requests must be accompanied by written justification.
  - 3. All requests for leave due to incapacitation for duty or medical/dental appointments must be accompanied by medical certification.
  - 4. No advance leave is authorized.
- C. The Leave Abuse Letter is not a disciplinary action. However, violation of the restrictions could be the basis for discipline. No record of the Leave Abuse Letter will be kept in the employee's Official Personnel Folder, unless it is referenced in, and is part of, a subsequent disciplinary action.

## **Section 14: Emergency Dismissal or Closure Procedures**

Employees will follow the Office of Personnel Management's posted policies found at <http://www.opm.gov/>. A copy of these policies and a URL link will be available in the Commission's FEC-wide shared folder and in the Office of Human Resources.

The agency will post these policies on the OHR intranet page. These electronic postings will also advise staff of where to find, and sign up for, direct alerts from OPM on emergencies and local closures. Staff are authorized to act immediately in accordance with such OPM alerts without waiting for any response from the OHR.

## **Section 15: Military Leave.**

A. An employee is entitled to time off at full pay for certain types of active or inactive duty in the National Guard or Reserve of the Armed Forces.

B. Coverage

Any full-time Federal civilian employee whose appointment is not limited to one (1) year is entitled to military leave. Military leave under 5 U.S.C. § 6323(a) is prorated for part-time career employees and employees on an uncommon tour of duty.

C. Types of Military Leave

1. 5 U.S.C. § 6323(a) provides fifteen (15) calendar days per Fiscal Year for active duty, active duty training, and inactive duty training. An employee can carry over a maximum of fifteen (15) calendar days in to the next Fiscal Year.
2. Inactive Duty Training is authorized training performed by members of a Reserve component not on active duty and performed in connection with the prescribed activities of the Reserve component. It consists of regularly scheduled unit training periods, additional training periods, and equivalent training. 5 U.S.C. § 6323(b) provided twenty-two (22) work days per calendar year for emergency duty as ordered by the President or a State Governor. This leave is provided for employees who perform military duties in support of civil authorities in the protection of life and property.
3. 5 U.S.C. § 6323(c) provides unlimited military leave to members of the National Guard of the District of Columbia for certain types of duty ordered or authorized under Title 39 of the *District of Columbia Code*.
4. 5 U.S.C. § 6323(d) provides that Reserve and National Guard Technicians only are entitled to forty-four (44) work days of military leave for duties overseas under certain conditions.

#### D. Days of Leave

1. Military leave should be credited to a full-time employee on the basis of an 8-hour work day. The minimum charge to leave is one (1) hour. An employee may be charged military leave only for hours that the employee would otherwise have worked and received pay.
2. Employees who request military leave for inactive duty training (which generally is two, four, or six hours in length) will be charged only the amount of military leave necessary to cover the period of training and necessary travel. Members of the Reserves and/or National Guard will not be charged military leave for weekends and holidays that occur within the period of military service.
3. A full-time employee working a 40-hour work week will accrue 120 hours (fifteen days times eight hours) of military leave in a Fiscal Year, or the equivalent of three (3) 40-hour work weeks. Military leave under Section 6323(a) will be prorated for part-time employees and for employees on uncommon tours of duty based proportionally on the number of hours in the employee's regularly scheduled bi-weekly pay period.
4. The employee will provide as much advance notice as possible to the Employer when the employee requests Military Leave. Such requests will be submitted using WebTA. Staff will check the "other (specify) block" and indicate it is a military leave request. Approval of military leave provided in the foregoing shall be based on a copy of the orders, an annual drill schedule, or other type of documentation provided to the Employer if possible, before the commencement of military duty or as soon as possible upon return from military duty. The recurring requirement to perform inactive duty training is an example of when written orders may not be formally issued prior to the training. However, the employee shall provide written proof of the completed inactive duty training as soon as possible upon returning to work.
5. When military duties require an employee to be absent from work for an extended period (i.e. more than five consecutive work days), during times of acute need, or when (in light of previous leaves) the requests military leave is cumulatively burdensome, the Employer may contact the military commander of the employee's military unit to determine if the duty could be rescheduled or performed by another member. If the military commander determines that the military duty cannot be rescheduled or canceled, the Employer is required to permit the employee to perform his or her military duties.

## **Section 16: Leave for Maternity/Paternity Reasons**

- A. Pregnancy shall be treated like any other medically certified temporary disability. Therefore, maternity leave may be a combination of as many as five (5) separate categories of leave: sick leave, annual leave, leave without pay (including FMLA), credit hours, and/or compensatory time.
- B. A pregnant employee may submit a request for modification of her work duties or a temporary reassignment to her manager. However, if the employee seeks a change in work duties as a reasonable accommodation for her condition, such requests shall be made through the Agency's EEO office.
- C. The Employer may grant leave to employees to aid or assist in the care of their spouse or minor children in accordance with appropriate laws and regulations; e.g., the Family Medical Leave Act. An employee who desires to aid or assist in the care of his/her newborn child or minor children, and/or to care for the mother of his/her newborn child as it relates to incapacity due to pregnancy or childbirth may request to be absent part-time or full-time with approved sick leave, annual leave, LWOP and/or use credit hours and compensatory time in accordance with applicable law, policy, and regulation, and the provisions of this Agreement.
- D. The Employer will consider granting an employee a leave of absence without pay for the purpose of adopting a child. Length of absence will be determined on the reasonable needs of both the Employer and the employee. In addition, an employee may use sick leave for purposes relating to the adoption of a child pursuant to Section 9.C.7 above and may be advanced sick leave for adoption under Section 10 of this Article.

Employees who have children under six (6) years of age, and employees who care for their spouses, children or parents with serious health conditions, may request part-time or job sharing opportunities pursuant to Article 40.

## **Section 17: Court Leave**

- A. An employee is entitled to time off at full pay without charge to leave for service when they are summoned as a (1) juror in a judicial proceeding, or (2) witness in a judicial proceeding in which the Federal, State, or local government is a party.
- B. An employee who is summoned as a witness in an official capacity on behalf of the Federal government is on official duty, not court leave.
- C. Fees paid for service as a juror or witness must be reimbursed to the employee's agency. However, monies paid to jurors or witnesses who are in the nature of "expenses" (e.g. transportation, etc.) do not have to be submitted to the employee's agency.

- D. Upon return to duty, the employee must submit documentation from the court showing their date of court service.

**Section 18: Excused Absences or Administrative Leave**

- A. Excused absences or administrative leave is an authorized absence from duty without loss of pay or charge to leave. The granting of administrative leave is at the Employer's discretion. Employees can be excused from duty when the employee's absence is not specifically prohibited by law and is:

1. directly related to the agency's mission;
2. officially sponsored by the agency head;
3. determined to enhance the professional skills of the employee in his or her current position; or
4. brief and determined to be in the interest of the agency.

- B. Common Reasons for Granting Administrative Leave

1. Voting

When voting polls are not open at least three (3) hours either before or after an employee's regular hours of work, then he or she will, upon written request, be granted an amount of administrative time by his or her Employer which will permit him or her to report for work three (3) hours after the polls are open or leave work three (3) hours before the polls close whatever requires the lesser amount of time off.

2. Blood Donations

- a. If an employee wishes to donate blood without compensation, he or she must receive advance supervisory approval. The Employer will approve up to four (4) hours of administrative leave for blood donations absent workload conflicts. If an employee's workload conflicts with the time and date requested to donate blood, the Employer will work with the employee to find another time and date for the blood donation to occur;
- b. The amount of administrative leave granted will include the amount of time necessary to travel to the donation site, donate blood, on-site recuperation (if needed), and return to work if the employee's tour of duty is not over. Such leave will be authorized for the day and the time of donation only.

### 3. Leave for Bar Swearing-In

- a. The Employer may grant of administrative leave (up to 24 hours) for actual time spent (including travel) for the purpose of attending state bar swearing-in ceremonies when attendance is a state requirement and no alternate bar-swearing in ceremonies are provided for in the Washington, DC metropolitan area.
- b. If a state provides for an alternate procedure for bar swearing-in ceremonies in the Washington, DC metropolitan area, the Employer will grant the necessary amount of administrative leave to attend the alternate procedure.
- c. The granting of administrative leave under this Section is limited to one (1) instance per employee and applies only to employees for whom Bar membership is a condition of employment. Requests for administrative leave must be in writing, submitted reasonably in advance, and, if submitted under Subsection a above, be accompanied by certification that a personal appearance be required by the state in question.

### **Section 19: Religious Observances**

- A. An employee may be granted annual leave, or if annual leave is exhausted, leave without pay, for a work day which occurs on a recognized religious observance, as long as the employee requests such leave five (5) work days in advance.
- B. An employee whose personal religious beliefs require the abstention from work during certain periods of time, including a religious observance connected with the death of an immediate family member, may elect to engage in overtime or compensatory work (when available) for time lost in order to meet those religious requirements.
- C. To the extent that such modifications in work schedules do not interfere with an efficient accomplishment of the Agency's mission, the Employer shall in each instance afford the employee the opportunity to work compensatory overtime and shall in each instance grant compensatory time off to an employee requesting such time off for religious observances when the employee's personal religious beliefs require that the employee abstain from work during certain periods of the work day or work week. For the purpose stated in B above, the employee may work such compensatory overtime before or after the granting of compensatory time off. A grant of advance compensatory time off should be repaid by the appropriate amount of compensatory overtime work within a reasonable amount of time. Compensatory overtime shall be credited to an employee on a hour-for-hour basis or one-half ( $\frac{1}{2}$ ) hour fractions. Appropriate records will be kept of compensatory overtime earned and used.

## **Section 20: Leave for Union Representatives**

- A. The Employer agrees to authorize annual leave or leave without pay to Union representatives for attendance at any Union-sponsored convention or meeting, as long as the employee has requested the leave two (2) work weeks in advance and would not create a workload problem.
- B. Additionally, the Employer will grant the Union officers and stewards leave to perform Union duties or engage in other Union business, unless the employee's absence would create a workload problem. The employee may charge such leave, at his or her option, to earned annual, advance annual, or if annual leave is exhausted, to leave without pay.

## **Section 21: Leave for Bone Marrow and Organ Donation**

Employees may use up to seven (7) days of paid leave each calendar year to serve as a bone marrow donor. An employee also may use up to thirty (30) days of paid leave each calendar year to serve as an organ donor. Leave for bone marrow and organ donation is a separate category of leave that is in addition to annual and sick leave.

## **Section 22: Voluntary Leave Transfer Program**

### **A. Procedures**

- 1. Application of leave recipient.
  - a. An employee who has been affected by a medical emergency and lacking sufficient annual leave may make written application to become a leave recipient. Such request must be submitted via supervisory channels, through the Office Head, to the Director of Human Resources. If such an employee is not capable of making application on his or her own behalf, another employee (e.g. co-worker, union representative) may make written application on his or her behalf, if so designated in writing by the requesting employee.
  - b. Each application shall be accompanied by the following information concerning each potential leave recipient:
    - i. the name of the potential leave recipient;
    - ii. a brief description of the nature, severity, and anticipated duration of the medical situation affecting the potential leave recipient;

- iii. written medical documentation confirming the information referred to above; and,
- iv. the information provided in support of an application to become a leave recipient is subject to the requirements of the *Privacy Act of 1974* and the *Health Insurance Portability and Accountability Act of 1996*. As such, this information will be provided only to the Employer, Office Head, the Director of Human Resources and the Staff Director. The information provided to these officials will not be released to any other FEC official or employee without the express written consent of the applicant. Violations will be handled as any other *Privacy Act* violation.

## 2. Review of Applications

- a. the Director of Human Resources or designee will ascertain that:
  - i. the potential leave recipient has been affected by a "medical emergency," as defined earlier in this Article;
  - ii. the period of absence from duty without available paid leave because of the personal emergency is (or is expected to be) at least twenty-four (24) hours (3 work days); and,
  - iii. the request meets the other requirements of this Article.
- b. Any application which is clearly lacking in documentation or other administrative requirements will normally be returned within three (3) calendar days to the applicant, who will be given an opportunity to revise the application as appropriate.
- c. All applications will be forwarded to the Staff Director for approval/disapproval.
  - i. Those applications which meet the requirements of applicable law and regulation will be approved. The requesting employee (or designated representative) will be so notified in writing within ten (10) calendar days after the date the application was received by the Office of Human Resources. (Approval means only that the requesting employee is eligible to accept grants of annual leave from qualified donors. It is not a guarantee that any, or a certain amount of leave will actually be transferred, since this depends on how much is made available by potential donors.)
  - ii. If an application is disapproved, the requesting employee (or designated representative) will be notified in writing within ten (10)

calendar days of receipt of the application, together with the reasons for the disapproval.

### 3. Donation Procedures

- a. The Office of Human Resources will maintain a roster of those employees whose requests to be designated as leave recipients have been approved, and will also periodically issue notices to all staff whenever an approved recipient has not yet received sufficient donated leave to cover his or her absence. Approved leave recipients may solicit donations from other FEC staff so long as it does not interfere with Agency business.
  - i. Employees may submit voluntary written requests that a specific number of hours of accrued annual leave be transferred from his or her annual leave account to the annual leave account of the specified, approved recipient. The request is to be submitted to the Director of Human Resources directly, or may be submitted through the specified recipient (or designated representative).
  - ii. Subject to the limitations on the amount of annual leave that may be donated under Subsection (3)(b) below, all or any portion of the annual leave requested may be transferred to the annual leave account of the specified leave recipient.
  - iii. Employees may not transfer leave to their immediate supervisor.
  - iv. Annual leave transferred under this Section may be substituted retroactively for periods of leave without pay (LWOP), or used to liquidate an indebtedness for an advance of annual or sick leave granted on or after the date of the period of medical emergency for which the LWOP or advanced leave was granted.
- b. Limitation on Donations of Annual Leave.
  - i. In any one leave year an employee may donate up to one-half ( $\frac{1}{2}$ ) the number of hours of leave he or she will accrue, or the amount of his or her current leave balance, whichever is less. For example, an employee who earns 208 hours of leave per year and who has a balance of 170 hours at the time of the donation may transfer up to 104 hours of leave ( $\frac{1}{2}$  of 208). Another employee who earns 160 hours of leave per year who has a balance of twenty-four (24) hours at the time of the donation may donate only up to twenty-four (24) hours of leave.
  - ii. With regard to those in a "use or lose" category, an employee may only donate that amount of leave which he or she could actually use in the

remainder of the leave year. The above limitation in Subsection 3(a) also applies.

- iii. The FEC may waive the limitations on the amount of annual leave a donor can request be transferred to a leave recipient.

#### 4. Inter-agency Transfers

- a. The FEC shall accept the transfer of annual leave from leave donors employed by one (1) or more other agencies when:
  - i. A family member of a FEC leave recipient employed by another agency requests the transfer of annual leave to the leave recipient;
  - ii. The Staff Director determines that the amount of annual leave transferred from leave donors employed by the FEC may not be sufficient to meet the needs of the leave recipient; or
  - iii. In the judgment of the Staff Director, acceptance of leave transferred from another agency would further the purpose of the Voluntary Leave Transfer Program.
- b. The employing agency of a leave donor who wishes to donate annual leave to a FEC leave recipient is required to verify the availability of annual leave in the leave donor's annual leave account, determine that the amount of annual leave to be donated does not exceed the prescribed limitations, and ascertain that the FEC made any determinations that may be required under Subsection (4)(a) above.

#### 5. Use of Transferred Annual Leave

- a. A leave recipient may use transferred annual leave in the same manner and for the same purposes as if he or she had accrued the annual leave in the normal fashion. A leave recipient must use all available annual and sick leave to their credit before donated leave can be used.
- b. The approval and use of transferred annual leave shall be subject to all of the conditions and requirements of applicable law and regulations and this Agreement, except that transferred annual leave may accumulate without regard to the limitation imposed by 5 U.S.C. § 6304(a).
- c. Transferred annual leave may not be:
  - i. re-transferred to another leave recipient;
  - ii. transferred to another Federal agency upon the leave recipient's transfer of employment;

- iii. included in a lump-sum leave payment; or
- iv. made available for re-credit under 5 U.S.C. § 6309 upon re-employment by a Federal agency.

6. Accrual of Annual and Sick Leave

- a. Except as otherwise provided in this Subsection, while an employee is in a transferred leave status, annual and sick leave shall accrue to the credit of the employee at the same rate as if the employee were then in a paid leave status under Subchapter I of Chapter 63 of Title 5, United States Code, except when:
  - i. The maximum amount of annual leave that may be accrued by an employee while in transferred leave status in connection with any particular medical emergency may not exceed forty (40) hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty); and
  - ii. The maximum amount of sick leave that may be accrued by an employee while in a transferred leave status in connection with any particular medical emergency may not exceed forty (40) hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty).
- b. Any annual or sick leave accrued by an employee under this Subsection:
  - i. shall be credited to an annual or sick leave account, as appropriate, separate from any leave account of the employee under Subchapter I of Chapter 63 of Title 5, United States Code; and
  - ii. shall not become available for use by the employee, and may not otherwise be taken into account under the Subchapter I of Chapter 63 of Title 5, United States Code, until, under paragraph (c) of this Section, it is transferred to the appropriate leave account of the employee under Subchapter I of Chapter 63 of Title 5, United States Code.
- c. Any annual leave accrued by an employee under this Section shall be transferred to the appropriate leave account of the employee under Subchapter I of Chapter 63 of Title 5, United States Code, effective as of the beginning of the first (1st) applicable pay period beginning after the date on which the employee's medical emergency terminates.

- d. If the employee's medical emergency terminates, no leave shall be credited to the employee under this Subsection.

## 7. Termination of Medical Emergency

- a. The medical emergency affecting a leave recipient shall terminate:
  - i. when the leave recipient's employment with the FEC is terminated;
  - ii. at the end of the bi-weekly pay period in which the Agency determines, after written notice and opportunity for the leave recipient (or, if appropriate, a personal representative of the leave recipient) to answer orally or in writing, that the leave recipient is no longer affected by a medical emergency; or
  - iii. at the end of the bi-weekly pay period in which the Agency receives notice that the Office of Personnel Management has approved an application for disability retirement for the leave recipient under the Civil Service Retirement System or the Federal Employees Retirement System.
- b. The Agency will continuously monitor the status of the medical emergency affecting the leave recipient to ensure that he or she continues to be affected by a medical emergency. The recipient may be required to provide updated information, including medical documentation.
- c. When the medical emergency affecting a leave recipient terminates, no further requests for transfer of annual leave to the leave recipient may be granted, and any unused transferred annual leave remaining to the credit of the leave recipient shall be restored to the leave donors under Subsection (8), below.

## 8. Re-crediting of Transferred Annual Leave

- a. Any transferred annual leave remaining to the credit of a leave recipient when the medical emergency terminates shall be recredited, to the extent administratively feasible, by re-transfer to the annual leave accounts of the specified leave donors currently employed by the FEC.
- b. In the case of multiple donors, the amount of unused transferred annual leave to be re-credited to each specified leave donor shall be in the same proportion as the amount donated, except that no less than one-half ( $\frac{1}{2}$ ) of an hour may be re-credited.
- c. At the election of the leave donor, unused transferred annual leave restored to the leave donor may be re-credited by:

- i. crediting the restored annual leave to the leave donor's annual account current leave year;
- ii. crediting the restored annual leave to the leave donor's annual leave account effective as of the first (1st) day of the first (1st) leave year beginning after the date of election; or
- iii. donating such leave in whole or part to another leave recipient.

#### B. Prohibition of Coercion

1. An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten or coerce, any other employee for the purpose of interfering with any right such employee may have with respect to donating, receiving, or using annual leave under this Article.
2. For the purpose of the preceding provision of this Subsection, the term "intimidate, threaten, or coerce" includes, but is not limited to, promising to confer or conferring any benefit (such as an appointment or promotion or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

### **Section 23: Family and Medical Leave (FMLA)**

#### A. General

The FMLA entitles eligible employees to take up to 12 workweeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons, or for any "qualifying exigency" arising out of the fact that a covered military member is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. The FMLA also allows eligible employees to take up to 26 workweeks of job-protected leave in a "single 12-month period" to care for a covered service member with a serious injury or illness.

#### B. Eligibility

To be eligible for FMLA benefits, an employee must:

1. have worked for the Employer for a total of 12 months;
2. have worked at least 1,250 hours over the previous 12 months; and
3. has work at a location in the United States or in any territory or possession of the United States where at least 50 employees are employed by the employer within 75 miles.

### C. Qualifying Exigency Events

The Agency will grant an eligible employee up to a total of 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

- a. Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.
- b. Because of the placement of a son or daughter with the employee for adoption or foster care.
- c. In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.
- d. Because of a serious health condition that makes the employee unable to perform the functions of the employee's position.
- e. Because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

The Employer will grant an eligible employee who is a spouse, son, daughter, parent, or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness up to a total of 26 workweeks of unpaid leave during a "single 12-month period" to care for the service member.

### D. Intermittent FMLA Leave

Under some circumstances, employees may take FMLA leave intermittently – taking leave in separate blocks of time for a single qualifying reason – or on a reduced leave schedule – reducing the employee's usual weekly or daily work schedule. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation. If FMLA leave is for birth and care, or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.

### E. Substitution of Paid Leave

An employee's ability to substitute accrued paid leave is governed by 5 CFR 630.1205.

FMLA leave is generally unpaid leave unless the employee seeks to substitute his/her FMLA leave with accrued paid leave (annual leave, compensatory time

earned, sick leave, etc.). When requesting FMLA leave in WebTA, the employee must indicate what portion of the requested leave period, if any, will be substituted with paid leave. Once the employee has been approved for FMLA leave, the employee's decision to substitute (or not substitute) his/her FMLA leave for paid leave is final. Paid leave cannot be substituted retroactively. Additionally, the Agency may not require an employee to substitute unpaid FMLA leave for paid leave.

F. Both the Employer and employee have responsibilities with respect to FMLA. For a summary of these responsibilities, please see Appendix IV.

#### G. Medical Certification

1. The Employer may require that an employee's request for leave due to a serious health condition affecting the employee or a covered family member be supported by a certification from a health care provider. Such certification must provide the following:
  - a. the date on which the serious health condition commenced;
  - b. the probable duration of the condition;
  - c. the appropriate medical facts within the knowledge of the health care provider regarding the condition;
  - d. the following requirements as applicable:
    - i. for leave taken to care for a family member, a statement that the employee is needed to care for the family member as defined in Section 1 of this Article, and an estimate of the amount of time that such employee is needed to care for such family member; and
    - ii. for leave taken for the employee's serious health condition, a statement that the employee is unable to perform the functions of the position of the employee; and
  - e. in the case of certification for intermittent leave (or leave on a reduced leave schedule) for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment.
2. The Employer may require that employees returning from leave for their own serious health condition must submit a certification that they are able to resume work.

3. If reasonable safety concerns exist, the Employer may, under certain circumstances, require such a certification for employees returning from intermittent FMLA leave.

# ARTICLE 28

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## PERSONNEL RECORDS

### Section 1:

- A. Each employee and/or the employee's representative (designated in writing) shall, upon written request and proper identification, be granted access to any record(s) pertaining to the employee with the exception of records restricted by the Office of Personnel Management, and/or records restricted by law or regulation. Such access will take place in the presence of the individual(s) having official custody of the record.
- B. Employees may instantly access their official personnel files through the electronic official personnel file (eOPF) system.
- C. Copies of such documents may be furnished to the employee and/or designated representative upon written request. Charges, if any, for such photocopies will be assessed in accordance with 5 C.F.R. § 297.115.

**Section 2:** Any record which is not available to the employee or his/her representative (designated in writing) for inspection and review will not be made available to any unauthorized person(s) for inspection, review, or duplication. Such information will be made available to authorized persons only for official use as provided for in the *Privacy Act of 1974*.

**Section 3:** It is agreed that Official Personnel Folders (OPF) and other personnel records will be maintained in accordance with applicable law and regulation, including the *Privacy Act of 1974*. The Employer will purge records in accordance with those standards.

## ARTICLE 29

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### NOTICE TO EMPLOYEES

**Section 1:** When the Employer presents the employee with written notices specified below in Section 2 of this Article, the employee will simultaneously receive a copy of that written notice which shall state at the top of the first page in capital letters: "THIS COPY MAY AT YOUR OWN OPTION BE FURNISHED TO NTEU CHAPTER 204." If this copy contains any privileged or confidential information, it shall be sanitized so that it may be given directly to any Union official.

**Section 2:** Section 1 of this Article applies to the following types of notices:

- A. letters of proposed disciplinary or adverse action;
- B. letters of decision for adverse action or disciplinary measures;
- C. letters of advance notice or decision to withhold a within-grade increase, to impose a reduction in force, or to downgrade an employee's classification;
- D. letters denying an outside employment request;
- E. letters of notice terminating a time-limited employee prior to the expiration of his/her appointment;
- F. letters placing an employee on a leave restriction;
- G. letters denying a waiver of overpayment;
- H. Individual Development Plans; and
- I. Performance Warning Letters.

# ARTICLE 30

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## **NEW EMPLOYEE ORIENTATION**

**Section 1:** The Employer will notify the Union Chapter President or his or her designee at least three (3) days in advance or as soon as practicable when new bargaining unit employees are to be sworn in. The Union Chapter President or his or her designee will be provided thirty (30) minutes of Official Time to meet with the new employee(s) during the orientation session. No employer representatives will be present during this time.

The Union may show an NTEU video during the orientation session, and distribute a package of materials. The Union will provide an initial copy of its orientation materials to the Employer at least twenty-four (24) hours prior to dissemination to employees. Thereafter, any updates to these materials will be provided to the Employer at least twenty-four (24) hours prior to dissemination to employees.

**Section 2:** Presentations at the orientation sessions shall not include solicitation of membership or discussions of internal Union business.

### **Section 3: Contract Training**

- A. The Employer shall provide a reasonable amount of time, not to exceed four (4) hours, and provide appropriate space available, for the Union to conduct a briefing of its officers and stewards on the new contract up to a limit of twenty (20) such Union positions.
- B. The Union shall be provided space to hold a briefing session on the new contract for unit employees. The session shall not exceed one (1) hour, shall be held between the hours of 11:30 a.m. and 1:30 p.m., and shall be conducted within thirty (30) days after copies of the new contract have been distributed.

# ARTICLE 31

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## **WAIVER OF OVERPAYMENTS**

### **Section 1: Overpayment**

Consistent with law, rule and regulation, an employee, individually or with a Union representative, may make a written request for a waiver of collection of an overpayment. Such request must be signed by the employee and detail the facts and circumstances surrounding the overpayment and the basis for the requested waiver. The Employer may, consistent with its legal authority, waive a claim arising out of an overpayment to an employee if all the following conditions are satisfied:

- A. The employee promptly notifies the agency upon becoming aware of the overpayment;
- B. the overpayment is in an amount aggregating not more than \$1500;
- C. The Employer has determined that the overpayment was due to administrative error, and there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee; and
- D. The amount is such that the administrative costs to collect the debt are higher than the debt itself, or there are other documented circumstances that show the collection of the debt would not be in the best interest of the United States.

### **Section 2: Collection**

When an employee has been determined to be indebted to the United States because of an erroneous payment which is not waived, the amount of indebtedness will be collected in compliance with Federal regulations and agency policies, which could include repayment in monthly installments, on a pay period basis, by a single deduction from the current pay account of the employee, by a payment arrangement mutually agreed to by the employee and the Employer, or by some other collection method, as determined by the Employer.

## ARTICLE 32

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### EQUAL EMPLOYMENT OPPORTUNITIES

**Section 1:** The Employer will provide two (2) properly trained Equal Employment Counselors to whom unit employees may consult with in connection with their Equal Employment Opportunity (EEO) complaints.

**Section 2:** EEO Counselors shall be selected by the Employer. At least one (1) of the Counselors shall be selected from among qualified bargaining unit employees. The Union will present a list of five (5) qualified unit employees for consideration by management, and the Employer will select at least one (1) of the Union's nominees. The Union agrees that its nominees will not include individuals serving as Union Officers or Stewards at the time of the nomination. The second (2nd) Counselor shall be selected as the Employer deems appropriate.

**Section 3:** The Employer will provide to the Union on a quarterly basis a statistical report dealing with equal employment opportunity within the Commission. This report will contain, at a minimum, the following:

- A. the average grade for all classes recognized in the *Uniform Guidelines on Employee Selection Procedures* (29 C.F.R. § 1607) by division or office;
- B. the percentage of the available positions that are filled by members of the classes noted above for each occupation in each division; and
- C. the number of employees during the previous quarter who were best qualified and selected, best qualified but not selected, qualified but not best qualified, applicants but not qualified, and of those numbers, the number representing employees in the affected classes described above.

**Section 4:** Employees who believe they have been illegally discriminated against on the basis of race, color, religion, sex, national origin, age, disability, or on the basis of their genetic information (as defined by the Genetic Information Nondiscrimination Act), have the right to raise the matter under the statutory EEO Complaint procedures or the Negotiated Grievance Procedure of this Agreement, but not both. Employees shall be deemed to have exercised their right of choice at such time as they file a timely formal EEO complaint or file a timely grievance under Article 47 of this Agreement.

# ARTICLE 33

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## TRAVEL

### Section 1: Federal Travel Regulations

- A. This Article refers at times to the Federal Travel Regulations. An electronic copy of the Federal government's official travel regulations, as prescribed by the General Services Administration (GSA), is available at <http://www.gsa.gov>.
- B. Employees will have the opportunity to question their immediate Employers or other Commission management officials about the application and interpretation of those regulations.

### Section 2: Scheduling Travel

- A. The Employer agrees, to the maximum extent practicable (5 U.S.C. § 6101(b)(2)), to schedule and arrange employee travel to take place within the affected employee's regular work week.
- B. In so far as practicable, travel during non-duty hours will not be required of an employee. When it is essential that an employee travel during non-duty hours and the employee is not eligible for overtime pay for those hours, upon request, the Employer will record, in writing, the reasons for requiring the employee to travel during non-duty hours and, upon request, furnish a copy of the recording document to the affected employee.

### Section 3: Travel and Employee Pay

Employees, while in travel status, are entitled to overtime compensation, including compensatory time where applicable, in accordance with Federal overtime pay regulations. The applicable regulations are cited below:

- A. Fair Labor Standards Act-Exempt Employees (5 C.F.R. § 550.112(g)). Time in travel status away from the official duty station of an employee is deemed to be hours of work only when:
  - 1. the time is within the employee's regularly scheduled administrative work week, including regular overtime work; or
  - 2. the travel:

- a. involves the performance of actual work while traveling;
  - b. is incident to travel that involves the performance of work while traveling;
  - c. is carried out under such arduous and unusual conditions that the travel is inseparable from work; or
  - d. results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of the employee to his or her Official Duty Station
- B. Employees Covered by the Fair Labor Standards Act (5 C.F.R. § 551.422). Time spent traveling will be considered hours of work if:
- 1. an employee is required to travel during regular working hours;
  - 2. an employee is required to drive a vehicle or perform other work while traveling;
  - 3. an employee is required to travel as a passenger on a one-day assignment away from his or her Official Duty Station; or
  - 4. an employee is required to travel as a passenger on an overnight assignment away from the Official Duty Station during hours on non-workdays that correspond to the employee's regular working hours.

#### **Section 4:**

- A. An employee must submit a Travel Authorization form seven (7) work days prior to departure date. If the employee cannot submit the travel authorization within seven (7) work days, documentation (with applicable supervisory approval) must be submitted to the Office of the Chief Financial Officer (OCFO) for review and final approval. Employees may apply for a Government-issued travel credit card after they have been approved for official travel by their supervisor. Upon request, the OCFO will work with employees whose credit card application has been denied or is still pending at the time of travel to make alternate arrangements.
- B. Within ten (10) work days of returning from travel, employees must submit their travel voucher. Travel vouchers will be processed (reviewed, approved, and certified) within ten (10) work days of submission. Employees will be notified if they owe additional funds or are due a reimbursement within three (3) work days of being processed. Reimbursements to the Agency and reimbursements to the employee will be made within three (3) work days of the notification. Employees who receive a reimbursement will be notified of the electronic transfer.

**Section 5:** In accordance with the Federal Travel Regulations, if the Employer disallows a travel claim for any reason, the Employer will notify the employee with an explanation of why the claim was disallowed within seven (7) work days of receipt of the claim.

**Section 6:**

- A. In accordance with the Federal Travel Regulations, the Employer agrees to reimburse employees when in a travel status outside the Washington, DC metropolitan area for per diem (the cost of lodging, meals and related incidental expenses, including taxes), transportation and other expenses incurred by them in the discharge of their official duties. The Employer agrees that the calculation of employee travel expenses, and the reimbursement of those expenses includes the rates for GSA designated high-rate geographical areas.
- B. On the first and last days of travel, the amount reimbursed for meals and related incidental expenses (M&IE) will be reimbursed based upon the number of hours the employee is in official travel status, as set forth in Section 301-11.101 of the Federal Travel Regulations. An employee who was in travel status for twelve (12) hours or more receives seventy-five (75%) percent of the applicable M&IE rate for the day of departure and the last day of travel.
- C. In accordance with the Federal Travel Regulations, the Employer will reimburse employees for all reasonable taxi tips and other tips as allowed by the FTR, not to exceed fifteen (15%) percent, the employee gives in connection with official travel.

**Section 7:** In accordance with Federal Travel Regulations, each employee in temporary travel status in the Washington, DC metropolitan area will be reimbursed for transportation costs incurred by them in the discharge of their official duties, to the extent those costs exceed the cost of travel to and from their residence to the Official Duty Station.

**Section 8:** When an employee in travel status becomes ill or injured, and is expected to remain so for a significant portion of the travel assignment, the Employer will pay normal travel and per diem expenses to return the employee, as promptly as possible, to his or her normal duty station.

**Section 9:** Actual subsistence expenses, up to the maximum permitted by law, will be provided to employees for lodging only when the requirements established by the Federal Travel Regulations are met. In unusual circumstances, when the "Actual Subsistence" or "high-rate geographic" expense reimbursement does not cover the allowable lodging costs incurred by an employee, the Employer will approve the

additional expense for lodging, up to the statutory maximum, when reasonable 97 justification is provided by the employee on his or her travel voucher. The justification should be in accordance with the criteria set forth in the Federal Travel Regulations.

#### **Section 10:**

- A. Official Travel Expected to Last Fewer than Thirty Days. An employee assigned to training or duty away from his or her regularly assigned post of duty, and who elects to return home during non-work days, will be reimbursed an amount not to exceed the per diem had he or she remained away from home.
- B. Official Travel Expected to Last More Than Thirty Days. An employee assigned to training or duty away from his or her regularly assigned post of duty, the duration of which is expected to be thirty (30) days or more is entitled to return home, on their own time, during weekends, at the Commission's expense under the following conditions:
  - 1. The employee notifies the Employer in advance so that travel arrangements can be made.
  - 2. The first trip home occurs on the third (3rd) weekend after the commencement of the assignment and all subsequent trips home occur no more than every other weekend thereafter (for example, the fifth weekend, the seventh weekend, the ninth weekend, etc.).
  - 3. The Employer retains the right to schedule work and travel assignments for Commission convenience. For example, if a work assignment which has lasted for thirty (30) days can be completed by having the employee remain on-site for less than one (1) additional work week, the Commission may refuse to pay for the employee's final weekend trip home. However, in such a situation, the employee retains the right to travel home on the final weekend of the assignment at his or her own expense.

#### **Section 11: Telephone Calls and E-Mail**

Employees who, while on official travel status or temporary duty assignment (TDY), use a computer for official work are permitted unlimited use of electronic mail during non-working hours for official computer use at no expense to the employee. Those employees who are not required to use a computer for official work while on official travel status or TDY, but who bring a computer with them, will not be reimbursed for any associated fees that the hotel may charge for using e-mail (for example, a fee for using a data port). Employees are responsible for any hotel connection charges or length-of-time use charges related to their personal use of the computer.

# ARTICLE 34

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## **PARKING AND PUBLIC TRANSIT SUBSIDY**

Sections 1 through 3 below address the allotment and use of parking space in the garage of the 999 E Street, N.W. building.

### **Section 1: Union's Parking Spaces.**

- A. The Employer will allot one (1) parking space to the Union without charge.
- B. Upon allotting its space, the Union will consider such equitable factors as the use of an employee's vehicle for employee carpooling and the FEC seniority of the employees applying for the space.
- C. The Union will be given reasonable advance notice if the space allotted to it under the terms of this Article can no longer be provided due to budget, security, or statutory reasons.

### **Section 2: Employer Leased Spaces Not Reserved for Official Needs**

Parking spaces for employees who are determined to be eligible for Employer leased parking spaces under the Employer's *Parking Policy for Agency Leased Spaces Not Reserved for Official Needs* ("Parking Policy"), will be assigned in accordance with the Parking Policy.

### **Section 3: Parking Spaces Leased by Employees**

- A. Employees who are not provided with Agency leased parking are responsible for arranging for parking and making payment of parking fees directly to the third party company. Information about renting parking spaces directly from the parking company may be obtained by contacting the parking garage attendant located at 999 E Street NW, Washington DC 20463.
- B. Employees contracting directly with the third party provider are considered to receive a Federal parking benefit in the form of reduced parking cost which is lower than local prevailing commercial rates. Employees who receive this reduced rate are not eligible to participate in the FEC Employee Transit Benefit Program as defined in Commission Directive 54, Employee Transit Benefit Program, Section I Policy Item 3.

#### **Section 4: Bicycle Storage**

A section of the FEC garage at 999 E Street, NW will be designated for bicycle storage. The Employer will provide bicycle racks for employees to safely store their bicycles during work hours.

#### **Section 5: Public Transit Subsidy**

The Employer agrees to pay public transit subsidy to FEC employees who use public transportation. The Employer will offer a monthly subsidy for all of those employees who commute to work by public transportation, or a vanpool that meets the IRS eligibility requirements for qualified transportation fringe benefits. The amount of the subsidy is dependent on an employee's commuting costs and cannot exceed the actual costs incurred. Commuting costs in this instance does not include parking garage costs.

#### **Section 6: Use of Public Transit Subsidy**

The parties understand that employees use their employee public transit subsidy (e.g., Smart Trip cards) occasionally for legitimate business purposes, as a matter of convenience and at the direction of their supervisors. Such usage shall not be deemed a violation of the transit subsidy program.

#### **Section 7: Forms and Applications**

The parties will work together to improve the application forms and procedures used for the FEC transit subsidy program. The parties recognize that future revisions to the Commission's public transit subsidy directive may be subject to impact and implementation bargaining to the extent required by law.

#### **Section 8: Information on Public Transit Subsidy**

At the request of any bargaining unit employee, the Agency will provide suitable and comprehensive information (whether by training or providing documentation) on applying for and maintaining transit subsidy benefits.

# ARTICLE 35

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## HEALTH & SAFETY

**Section 1:** To the extent of its ability and authority, the Employer will provide and maintain safe and healthy working conditions for its employees. In the event of a dispute over the health and safety of working conditions, the General Standards of the Occupational Safety and Health Administration (OSHA) will apply unless the Employer shows good cause that other standards would be more appropriate. The parties recognize that 41 C.F.R. Chs. 101-20 assigns responsibility to General Services Administration (GSA) to prescribe the policies and procedures for the management, operation, protection, and maintenance of government-owned and government-leased buildings and that the Employer's authority in these areas is limited. The Employer recognizes the existence of certain employee rights under 29 C.F.R. Part 1960, among them the right to be free from reprisal for filing a report of an unsafe or unhealthy working condition, or other participation in agency occupational safety and health program activities or for declining to perform assigned tasks because of reasonable belief that, under the circumstances, the tasks pose an imminent risk of death or serious bodily harm, coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures established by the Employer.

**Section 2:** The employees are encouraged to inform the Employer of any unsafe or unhealthy practice, equipment, or condition which might represent a health and safety hazard. When an employee so notifies the Safety Officer, he/she will provide notice to the Union. Should any subsequent meetings be held to discuss the matter, the Union shall be given reasonable advance notice and an opportunity to attend.

**Section 3:** The Employer will provide that each building that it occupies with bargaining unit employees shall have health and safety inspections twice yearly. Such inspections shall be directed by a Safety Officer of the Employer, or designee, who shall be accompanied by a designated representative of the Union. Where this designated Union representative is an employee, the representative may participate in the inspection without charge to annual leave or leave without pay. These individuals, plus one other selected by the Employer and one other designee of the Union, shall constitute the Joint Safety Committee. The Committee shall meet periodically to discuss safety concerns. Such meetings and the safety inspections referenced above shall be conducted on Official Time pursuant to Article 6, Section 2(J) of this Agreement. Training that the Employer deems appropriate shall be provided to members of the Safety Committee (meaning the Safety Officer and representatives) to help them identify possible safety and health problems.

**Section 4:** The Employer will on an annual basis notify all employees about the proper means for leaving the building during a suspected fire.

**Section 5:** Employees are entitled to use the health unit on the first (1st) floor. Employees who become ill or have a minor ailment during working hours may go to the health unit.

**Section 6: Cardio-Pulmonary Resuscitation (CPR) Training**

- A. The Employer will assure that at least 3 bargaining unit employees are trained in cardio-pulmonary resuscitation (CPR) techniques. The Employer will also assure that there is at least one (1) individual trained in CPR per floor.
- B. The names of the individuals who are trained in CPR techniques shall be posted in reasonable places so as to assure proper employee awareness.
- C. Subsections A. and B. above are subject to budgetary restrictions.

**Section 7:** Where available through the Public Health Service, and if within budget limitations, the Employer will provide free flu shots on an annual basis, as well as appropriate eye tests, examinations for the detection of breast cancer, heart trouble, and sickle-cell anemia.

**Section 8:** When it is necessary for an employee to leave work and return home because of illness or incapacitation, the Employer will assist in locating a willing employee to transport the sick employee to his/her residence. The Employer will allow a reasonable amount of time to the employee transporting the sick employee for this to be done. The parties agree that the Employer's monetary, tort, or pecuniary liability is governed by the Comptroller General and Federal Court decisions. The Employer assumes only that responsibility or liability allowable by law, regulation, or such decisions.

**Section 9:** The Employer will supply the designated Union official a copy of any air and water quality reports, and any fire or accident reports it is required to file within five (5) days of the filing of such reports, provided that these reports are normally available to the public.

**Section 10:**

- A. Use of Chemicals in the Workplace.

1. The Employer will inform the Union of chemicals that are used in its building as pesticides as soon as it is aware that pesticides will be used. In no case may the notice be given later than one (1) hour before the pesticides are to be used. This notice will also include any warning statements given to the Employer or its agents by the organization applying such pesticides.
  2. The Employer will give advance notice to the Union of the use of any chemicals, such as formaldehyde cleaners, solvents, volatile organic compounds, petroleum hydrocarbons, and brass cleaners used in the space it occupies, to the extent that the Employer has control over or advance knowledge of the use of any chemicals.
- B. Where there is a reasonable likelihood of harm, employees will be allowed to move to safe areas while their area is contaminated or will be given administrative leave to go home for the duration of the contamination, at the option of the Employer, through the employee's normal supervisory chain of command.
- C. The Employer will notify the Union in advance when any construction will be done in the portion of the building it leases and will negotiate with the Union over all appropriate matters, including the health and safety concerns of affected employees.
- D. If no running water is available for a significant period of time (usually in excess of one hour), employees will be given administrative leave until the problem has been corrected.

**Section 11:** The Employer will take reasonable steps within the limits of its authority to assure that offsite working conditions are adequate as specified in Section 1 of this Article.

- A. When working conditions are such that an employee cannot work safely, he/she may request permission, from the appropriate supervisor or manager, to leave the work site and return to the FEC office (if out of the metropolitan area, to be relocated to another work area, if available). In cases of critical safety or health hazards, the employee may leave the immediate proximity of the alleged hazard to seek relief under this Section. The Employer shall make reasonable efforts to determine if the working conditions are unsafe or unhealthy. If permission to leave the work site is denied, the employee shall continue to work.
- B. If the Employer agrees that conditions are such that the employee cannot work safely, the employee shall be assigned work in another area or, if none is available, given administrative leave for the remainder of the work day.

- C. In reaching a decision as to whether or not the employee must continue to work, the Employer shall consider not only the needs of the agency, but also the safety and health of the employee.
- D. Employees who believe an illness or injury occurred as the result of the performance of official duties may file a claim for benefits under the *Federal Employees Compensation Act*. The Employer, including its Office of Human Resources, shall provide the necessary assistance to the employee in completing the necessary forms.

**Section 12:** The Employer will make reasonable efforts to provide for smoking and non-smoking areas at the FEC office, subject to the availability of space, and future government regulations.

**Section 13:** The Employer will make available to employees through the Health and Wellness Coordinator, information published by OSHA, Public Health Service (PHS) or other knowledgeable source, on the health and safety risks associated with visual display terminal (VDT) use, including any preventative or remedial measures. The Employer will periodically notify employees of the availability of such materials.

**Section 14:**

- A. The Employer will provide limited air quality inspections appropriate for the site whenever there is a significant, long-term change in an office environment which might result in a change in carbon dioxide levels, total hydrocarbons, respirable dust, temperature or humidity, for example, whenever there is significant construction in the portion of the building it leases.
- B. The Employer shall provide inspections of water quality in the drinking fountains and sinks to measure bacteria and lead content once every five (5) years, or more frequently if there has been a change in the environment which would affect the water supply. Water inspections shall also be done whenever new work space is acquired for bargaining unit employees, unless testing was done within the last five (5) years and the tests results are obtained.
- C. Copies of all air and water quality inspections shall be given to the Union in a timely manner. Limited air and water quality testing will be performed on newly acquired work space, if it has not been previously tested.

**Section 15:** A list of the members of the Joint Safety Committee will be updated annually and a copy will be sent to the Union. The names of the Safety Officer and the Health and Wellness Coordinator will be sent to all employees annually.

**Section 16:** When necessary to protect health and safety, the Agency may reimburse employees for the usual taxicab fares for travel between office and home incident to the conduct of official business at an employee's designated post of duty. In order to be reimbursed under this Section, the employee must:

- A. be dependent on public transportation and must travel during hours of infrequently scheduled public transportation or darkness; and
- B. be directed to work overtime or compensatory time by the Employer. There must be an immediate necessity that the overtime work be completed prior to the start of the next workday so that the employee is required to work beyond his/her normal tour of duty.
- C. The request for reimbursement must be made in advance and approved by the employee's supervisor and the office head. The request must include a reasonable estimate of the cost of a taxicab ride to the subway or the employee's home. An approved overtime/compensatory time form must be attached to the claim for reimbursement.
- D. Commuting costs will be taken into consideration when assigning overtime and compensatory time; however, assignment of overtime or compensatory time shall be based on equitable, merit-based principles pursuant to Article 24 of this Agreement.

## ARTICLE 36

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### **DISABLED EMPLOYEES**

Employees temporarily unable to do their regularly assigned tasks will be given light duty assignments when possible so as to avoid losing compensation.

# ARTICLE 37

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## EMPLOYEE ASSISTANCE PROGRAM

**Section 1:** The Employer will provide a comprehensive Employee Assistance Program (EAP) which includes professional, confidential counseling services. There will be no charge to the employee for such services (up to the limit of the contract between the government and the counseling service). The EAP is designed to assist work organizations address productivity issues by providing both prevention and intervention for employee problems, thus improving employee health, as well as work place performance.

Employees who suspect they may have problems (e.g., alcohol, drug abuse, emotional, behavioral, etc.) which currently, or have a potential to, interfere with or impact their job performance or conduct are encouraged to and may voluntarily seek assistance from an EAP. Employees may contact an EAP counselor directly. The Employer will not restrain, interfere with, coerce, discriminate, or retaliate against employees for seeking or availing themselves of EAP assistance. Employees who use EAP are expected to adhere to job performance requirements of the organization.

**Section 2:** The Union agrees to assist in publicizing the availability of counseling services, and to inform employees of the ramifications of failing to correct their performance/attendance/conduct deficiencies.

**Section 3:** It is understood that employees undergoing a prescribed program of treatments will be granted such leave for this purpose on the same basis as any other illness when absence from work is necessary. If an employee requests assistance for his/her problem, the Employer may take into consideration (as a positive factor) the employee's willingness to participate in EAP when determining appropriate disciplinary or adverse action, if such action becomes necessary. The Employer may permit the use of a flexible or compressed work schedule to accommodate the employee's participation in counseling, treatment, and/or rehabilitation programs.

**Section 4:** The Employer will offer the opportunity to become rehabilitated to any employee with a qualified disability under the Rehabilitation Act.

**Section 5: Confidentiality**

- A. All EAP records of participants will be kept confidential to the extent required by law, rule or regulation.
- B. No information pertaining to the EAP services will be retained in the employee's official personnel file (OPF). Information regarding EAP services may only be released to a third party with the employee's written permission, or when mandated by law, rule regulation, court order or for other lawful purposes.
- C. The Employer may receive EAP information in accordance with law, rule or regulation.

**Section 6: Drug Free Workplace**

- A. The parties agree that the workplace shall be free from the illegal use, possession, or distribution of controlled substances, (as specified in Schedules I through V, as defined in 21 U.S.C. § 902(6) and listed in Part B, Subchapter 13 of that Title), and that the FEC's workplace shall be maintained in a safe, healthful, productive and secure manner.
- B. The Employer recognizes its obligation to give advance written notice to the Union and an opportunity to bargain over the impact and implementation of the FEC's Drug Free Workplace Program.

# ARTICLE 38

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## RETIREMENT

### **Section 1:** Retirement Planning

FEC agrees that covered employees shall be given an opportunity to voluntarily participate in a retirement planning program. Priority shall be given to employees who are within five (5) years of retirement eligibility. This program, whether established by the FEC or contracted through another agency may include the following subjects: counseling on tax issues related to retirement, discussions on health problems related to retirement, explanation of social security benefits, explanation of federal health care benefits, as well as any other public health care programs, aspects of senior citizenship, such as wills and estates, and explanations of Federal life insurance benefits as well as life insurance problems associated with the transition between a work and a leisure environment.

### **Section 2:** Retirement Information Upon Separation

Each employee who retires will be given an OPM retirement brochure. Upon request, each employee who separates voluntarily or involuntarily (except by retirement) will be informed by the FEC as to his/her rights to file for disability retirement, the possibility of applying for a discontinued service annuity and eligibility for deferred annuity at age 62.

### **Section 3:** Withdrawal of a Resignation/Retirement Application

An employee may withdraw a resignation or an application for retirement before its effective date provided the withdrawal is communicated in writing to the employee's supervisor. In accordance with 5 CFR 715.202, the employer may decline a request to withdraw a resignation or retirement application before its effective date when it has a valid reason and explains that reason to the employee. A valid reason includes, but is not limited to, administrative disruption or the hiring or commitment to hire a replacement.

### **Section 4:** Request for Annuity Information

Upon written request, any employee will be provided with a calculation of their annuity entitlement within fifteen (15) workdays of submitting the request if practicable.

**Section 5: Union Notification**

The FEC agrees to notify Chapter 204 within twenty (20) workdays after the date of any bargaining unit employee's retirement, in a manner consistent with law, rule and regulation.

## ARTICLE 39

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### TEMPORARY EMPLOYEES

**Section 1:** The Employer will grant all temporary employees the right to enroll in government life insurance and health insurance programs if allowable under government regulations.

**Section 2:** Whenever possible, temporary employees serving in time-limited appointments will be given two (2) weeks advance notice when their appointments will not be renewed.

**Section 3:** The Employer will give two (2) weeks notice to a temporary employee where it is terminating the employee more than two (2) weeks prior to his/her original appointment termination date, unless such is not possible. If the employee elects, he/she may submit a written reply to the termination notice or request a meeting with the appropriate Assistant Staff Director to discuss the reasons and/or alternatives for termination. The Assistant Staff Director will reply in writing to the above before the employee is terminated, unless such is not possible.

**Section 4:** The parties agree that the decision to terminate a temporary employee prior to the termination of his/her appointment is non-grievable. However, employees can grieve the failure of the Employer to follow procedures and any damage done by that failure.

# ARTICLE 40

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## **PART-TIME EMPLOYMENT**

**Section 1:** It is the Employer's policy to provide permanent part-time employment opportunities in unit positions through GS-15 to the extent that part-time employment would further the efficient accomplishment of the operations of the Agency. This policy recognizes the desirability of maximizing utilization of all available human resources, particularly those qualified individuals available for part-time employment, and offers an opportunity to acquire talented workers who might otherwise not be available to the Commission.

### **Section 2:**

#### A. Part-time Career Employment.

Part-time career employment is regularly scheduled work of sixteen (16) to thirty-two (32) hours a week performed by an employee. Employment on a temporary or intermittent basis does not constitute part-time career employment for the purpose of this Article.

#### B. Variety of Working Arrangements. Part-time career employment can be structured in a variety of ways. Possible arrangements include, but are not limited to, a reduced work week and job sharing.

### **Section 3: Exceptions and Limitations.**

#### A. Part-time employees may not normally be appointed to a regular schedule of more than thirty (32) hours a week. The Employer may, however, approve part-time work of less than sixteen (16) hours a week as an exception.

#### B. No position occupied by an employee shall be abolished solely to make the duties of the position available for inclusion in a part-time career employment appointment.

#### C. No person employed on a full-time basis shall be required to accept part-time employment as a condition of continued employment.

#### **Section 4: Job Sharing**

Job sharing is a type of part-time employment where the hours of two (2) employees in part-time positions are arranged to cover the duties of a single full-time position. Generally, a job sharing team means two employees at the same grade level. Job sharers are subject to the same personnel policies as other part-time employees. When a position must be staffed on a full-time basis, job sharing may be an option.

#### **Section 5: Procedure for Requesting Part-Time or Job-Share Employment**

Employee requests will be handled fairly and objectively in accordance with the standards set out in this Article. Employees requesting an individual part-time position must submit a written request to their respective first line supervisors, indicating the hours and schedule being requested. Employees requesting part time employment as part of a job sharing arrangement must together submit a written request to their first line supervisor, indicating the hours and schedule being requested for each employee. The decision to approve or deny a request for part-time employment will be based on factors such as: position, work-group, and employee-related factors; and the impact on workload, staffing, mission requirements and the efficiency of Agency operations . The Agency shall respond to the employee in writing within ten (10) workdays of the request. If after taking into consideration the above factors and requirements there are more requests than available positions for part-time or job-sharing employment, employees with the most FEC seniority will be selected.

#### **Section 6: Part-Time Employment Schedules**

The Agency may increase, decrease, or change the hours of a part-time schedule based on workload, staffing, and mission requirements. When the schedule has to be adjusted, it will normally be established prior to the beginning of the workweek. If the total part-time hours are to be permanently increased or decreased, a SF-52 form must be submitted to the Office of Human Resources. For example, if the employee was scheduled to work 24 hours per pay period and his/her schedule is increased to 32 hours per pay period, a SF-52 form must be submitted to reflect this change. Issuance of a SF-52 form is not required for the occasional change in hours worked.

# ARTICLE 41

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## PROHIBITED PERSONNEL PRACTICES UNDER 5 U.S.C. 2302

**Section 1:** Employees are protected from certain personnel practices by law. These personnel practices may arise in connection with an appointment, promotion, disciplinary action, performance evaluation, or any other personnel action as that term is defined by 5 USC 2302(a)(2)(A). The provisions of the law are set out in their entirety in Appendix V to this Agreement.

**Section 2:** Generally, under the law it is unlawful for anyone to:

- A. Illegally discriminate for or against any employee on the basis of race, color, religion, sex, national origin, age, disability, retaliation, whistleblowing, marital status or political affiliation);
- B. Solicit or consider improper recommendations for any of the personnel actions provided in 5 USC 2302(a)(2)(A);
- C. Coerce an employee's political activity;
- D. Obstruct a person's right to compete for employment;
- E. Influence any person to withdraw from competition for a position for the purpose of injuring or improving a person's employment prospects;
- F. Give unauthorized preference or improper advantage for the purpose of injuring or improving a person's employment prospects;
- G. Employ or promote a relative subject to the conditions of 5 USC 2302(b)(7);
- H. Retaliate against employees for filing an appeal or complaint;
- I. Unlawfully discriminate against an employee for conduct that does not adversely affect the performance of the employee or the performance of others (i.e. off duty conduct), except to the extent permitted by law;
- J. Knowingly violate veterans' preference requirements; or
- K. Violate any law, rule, or regulation that implements or directly concerns merit principles.

**Section 3:** Employees who believe that they have been subject to one of these unlawful employment practices may grieve the matter under the grievance procedure in Article 47 of this Agreement or file an appeal or complaint under the applicable statutory appeals procedure (e.g., EEO, MSPB).

**Section 4:** The Union has the right to decide whether to appeal to arbitration in these matters.

# ARTICLE 42

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## PROBATIONARY EMPLOYEES<sup>1</sup>

### Section 1: Scope

All provisions of this Labor Management Agreement apply to probationary employees, except those provisions which are inconsistent with law, rule or regulation. At the employee's choosing, the Union may represent probationary employees in connection with any matter consistent with law or regulation and this Agreement, including, but not limited to the following:

- A. the denial of leave, including the Family and Medical Leave Act (FMLA);
- B. a request for an Alternative Work Schedule (AWS);
- C. an investigation conducted by the Inspector General's office;
- D. an improper reassignment or error in the merit promotion process;
- E. a dispute over a performance appraisal or rating of record; and
- F. employment related claims that may be raised to outside Government agencies.

**Section 2:** In accordance with 5 USC 7511(a)(1)(C), non-preference eligible employees hired for permanent appointments will serve a probationary period of two years. However, employees who have completed two (2) years of current continuous service in the same or similar positions in an Executive Agency (which was not a temporary appointment of 2 years or less) will not be subject to this probationary period. In any event, an employee's total probationary period shall not exceed two years. During the probationary period, the employee's conduct and performance will be observed. During this period, an employee may be separated in accordance with this Article and applicable regulations.

### Section 3:

- A. During the probationary period of the employee, the Employer will closely observe the employee's conduct, work habits, performance, and potential to determine his or her fitness and qualifications for continued employment.

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<sup>1</sup> The term *probationary* period as used herein is synonymous with *trial* period as applicable to the excepted service.

When it appears that the employee's performance or conduct may be lacking, the Employer may counsel the employee by:

1. explaining what is required of the employee in the position;
  2. identifying areas where the employee needs improvement; and,
  3. suggesting ways or means for the employee to improve his/her performance or conduct.
- B. In addition to the ongoing feedback process described above in Section A, during the sixth (6<sup>th</sup>) and eighteenth (18<sup>th</sup>) month of employment, the employee's supervisor shall meet with the employee to provide the employee with feedback on the items above. This meeting shall include specific suggestions on improvements, if needed, and statements regarding assistance that the Employer will provide. The sixth and eighteenth month feedback sessions may coincide with the employee's mid-year performance reviews.

#### **Section 4: Supervisory Certification**

- A. Prior to the end of the twenty-third month of the probationary period, the employee's supervisor shall submit form AD-507 to the Office of Human Resources and provide a copy to the employee, certifying that the employee's performance and conduct is satisfactory or unsatisfactory. It is recognized that not all elements of form AD-507 may be applicable for some positions.
- B. The certification referred to in Subsection A above will contain a definitive recommendation whether the employee should be retained beyond the probationary period. A recommendation to separate the employee must be reviewed and concurred in by the Division Director.
- C. Nothing in this Agreement is to be interpreted as preventing or discouraging the initiation of removal action at any time during the probationary period (e.g., if conduct, suitability, or performance deficiencies become apparent at any time during the probationary period).

**Section 5:** An employee's separation from the Commission's payrolls under this Article must be effected before the employee has completed his probationary period.

**Section 6:** Termination of Probationary Employees for Unsatisfactory Performance or Conduct

When an agency decides to terminate an employee serving a probationary or trial period because their work performance or conduct during this period fails to demonstrate his/her fitness or qualification for continued employment, it shall terminate his/her services by notifying him/her in writing as to the reason(s) for the termination and the effective date of the action. Upon request, the employee may receive a copy of the material, if any, used to support the termination. The timing of the employee's receipt of this material shall not toll or otherwise affect the effective date of his/her termination. Nor does providing this material create an administrative entitlement for the employee (e.g., appeal of the termination decision) not otherwise provided by law.

**Section 7:** Termination of Probationary Employees for Conditions Arising Before Appointment

- A. As provided under 5 CFR 315.805, when an agency proposes to terminate an employee serving a probationary or trial period for reasons based in whole or in part on conditions arising before his/her appointment, the employee is entitled to the following:
1. Advance written notice stating the reasons, specifically and in detail, for the proposed action.
  2. A reasonable time for filing a written answer to the notice of proposed adverse action and for furnishing affidavits in support of his/her answer. If the employee answers, the agency shall consider the answer in reaching its decision.

**Section 8:** Termination of Probationary Employees for Unsatisfactory Performance or Conduct

As provided under 5 CFR 315.804(a), when the Employer decides to terminate an employee serving a probationary or trial period because his/her work performance fails to demonstrate that he/she is fit or qualified for continued employment, the Employer shall terminate the employee by notifying him/her in writing as to why he/she is being separated and the effective date of the termination action. The information in the notice as to why the employee is being terminated shall consist of the Employer's conclusions as to the inadequacies of his/her performance or conduct.

**Section 9:** When a probationary employee is to be separated, he/she will, if possible, be notified in writing ten days in advance of the termination, the specific reasons(s) for the termination, and the effective date of the action. The Employer shall simultaneously provide a copy of this notice to the Union. The employee and a Union representative are entitled upon request to meet with the Staff Director or his/her designee to discuss the matter. Such request must be made in writing within three (3) days of receipt of the aforementioned notice. The final decision by the Staff Director shall not be made until after the meeting if one is timely requested.

Certain probationary employees have a right to appeal their termination with the Merit Systems Protection Board (MSPB). Probationary employees may appeal their terminations to the MSPB when: 1) they allege the termination was based on political affiliation or marital status discrimination; or 2) they allege that the termination process was not conducted in accordance with 5 CFR 315.805. Appeals to the MSPB by probationary employees are otherwise prohibited. The decision notice will apprise probationary employees of these rights, as well as inform the employee of the time limits to appeal the termination.

**Section 10:** Separation actions taken under this Article are not subject to the grievance or arbitration provisions established elsewhere in this Agreement.

**Section 11: Right to Appeal Alleged Discrimination Actions**

- A. Where the probationary employee believes that his/her termination is based on discrimination, the employee may pursue an appropriate appeal with the Equal Employment Opportunity Commission (EEOC), or where the employee alleges marital status or political affiliation discrimination, he/she may file an appeal with the MSPB as indicated above.
- B. The employee elects the forum by filing an appeal, in writing, within thirty (30) calendar days of the effective date of the action with the MSPB, or by filing a discrimination complaint within forty-five (45) calendar days in accordance with agency procedures. The employee may not utilize both procedures but must elect one or the other in writing.

**Section 12: Voluntary Resignation in Lieu of Termination**

Probationary employees may choose to voluntarily resign in lieu of termination at any time prior to the date of their termination. If the probationary employee voluntarily resigns, the employee's official personnel folder will reflect the voluntary resignation in lieu of termination.

# ARTICLE 43

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## DISCIPLINARY ACTIONS

### Section 1: Purpose

The purpose of discipline is to correct improper employee conduct and to maintain order, morale, and workplace safety throughout the FEC workforce. Such actions will promote the efficiency of the service. The parties recognize that disciplinary actions should normally be progressive in nature if they are to correct an employee's misconduct. However, discipline need not follow any specific sequence. Accordingly, it is the policy of the Agency that the penalty, which can reasonably be expected to achieve these objectives, will be administered proportionate to the offense, and consistent with like offenses. The Agency will consider the existence of any aggravating and/or mitigating circumstances, and any other factors bearing on the incident(s) or act(s) underlying the action. The parties recognize that the agency has a management right to discipline its employees.

The Employer has the burden of proof to establish by a preponderance of the evidence that the action is warranted. Any such actions must be taken only for such cause as will promote the efficiency of the service.

### Section 2: General

This Article applies to the following disciplinary actions:

- A. Oral admonishments confirmed in writing
- B. Letter of Reprimand
- C. Suspensions of 14 days or less.

### Section 3: Investigative Inquiries

- A. Before initiating a disciplinary action, the Employer may conduct an inquiry into any apparent offense to ensure the objective consideration of all relevant facts and aspects of the situation. Ordinarily, this inquiry will be conducted by the employee's supervisor, or a Human Resources Specialist, whichever is appropriate. However, certain situations (particularly those involving possible criminal activity or EEO issues) may warrant an investigation by the Office of the Inspector General, or the Office of Equal Employment Opportunity.

B. Representation If the Employer conducts an investigative interview with a bargaining unit employee, the Union shall be given the opportunity to have a representative present if:

1. the employee reasonably believes that the examination may result in disciplinary action against the employee; and
2. the employee requests representation.

The employee will be notified reasonably in advance of the meeting of the right to representation. If the employee requests a Union representative, reasonable time will be provided to secure and speak with a representative. The role of the representative at such investigative interviews is to assist the employee, but not to interfere with the Employer's legitimate right to conduct its investigation.

#### **Section 4:**

Upon request of the affected employee, the Employer shall give a copy of the disciplinary case file containing any material relied upon by the Employer as the basis for the disciplinary action. Such information shall be supplied in a manner consistent with the requirements and provisions of the *Privacy Act*, and shall include relevant exculpatory information developed as part of any investigative reports contained in the file.

#### **Section 5:**

Discipline imposed by the Employer will be administered as timely as possible; however, when an employee has been advised that he or she is/was the subject of an investigation, and a determination is made not to propose a disciplinary action based on its review of an investigation conducted in accordance with Section 3 of this Article, the designated proposing official will issue the appropriate letter (i.e., clearance or closed without action) to the employee within a timely fashion, normally within fifteen (15) days of when the case involving the employee is closed. However, the Employer retains the right to re-open the matter following the conclusion of other investigations. The letter will not be placed in the employee's Official Personnel Folder (OPF) unless requested by the employee in writing.

#### **Section 6: Procedures for Disciplinary Actions**

##### **A. Oral or Written Warning**

1. An oral admonishment confirmed in writing—is an informal written memorandum confirming an oral correction of an employee's misconduct or other deficiency. A written warning is a formal statement given to an employee

for an act of misconduct. Such warnings notify an employee of a standard which if not adhered to may result in stronger discipline.

2. Oral warnings confirmed in writing and written warnings shall be retained in the employee's Official Personnel Folder (OPF) for not more than six (6) months from the date of misconduct.

#### B. Letter of Reprimand

1. A reprimand is a written document describing the conduct or other deficiency giving rise to the reprimand, and provides official notice that a failure to correct the conduct or deficiency, or repeated instances, shall result in more severe action.
2. The reprimand will include the following:
  - a. A description of the specific incident(s) on which the reprimand is based, and the related charges.
  - b. The period of time a copy of the reprimand will be maintained in the employee's electronic Official Personnel File (e-OPF).
  - c. The possibility of taking more serious action for any subsequent offenses(s).
  - d. The employee's right to review all evidence used to support the charge(s).
  - e. The employee's grievance rights in accordance with Article 47.
  - f. The name and contact information of the NTEU Chapter 204 Union President, or his/her designee.

- C. Reprimands shall be retained in the employee's OPF for a period of one (1) year from the date of issuance.

### **Section 7: Suspension of Fourteen Days or Less**

A disciplinary suspension is a management directed absence from work for an employee, with forfeiture of pay for the time specified. When the Employer proposes to suspend an employee for 14 days or less, the following procedures will apply:

#### A. Proposal

The Employer will provide employees with ten (10) work days advance written notice of a proposed suspension. An employee against whom a suspension of 14 days or less is initiated is entitled to receive a written proposal which includes the following:

1. Description of the specific incident(s) on which the proposed action is based, and the related charges.
2. The proposed length of the suspension.
3. The name of the management official who will receive the employee's oral or written response.
4. The employee will normally receive up to a total of eight (8) hours of official time to prepare an answer to the proposal.
5. The right to review all evidence used to support the charge(s).
6. The right of the employee, or the representative designated by the employee, to request an extension of the time to respond.
7. The name and contact information of the designated Deciding Official.
8. The name and contact information of the NTEU Chapter 204 Union President, or his/her designee.

#### B. Employee Response

The employee shall be provided ten (10) work days from receipt of the notice of disciplinary action to answer the charges orally or in writing. The procedures for providing oral and written replies to the proposal are as follows:

1. **Written Reply.** An employee may choose to submit a written reply to the proposed disciplinary action within the time limits prescribed above. The employee may submit affidavits and/or other documentary evidence in support of the answer. The reply shall be made to the identified Deciding Official in the proposal who is a higher-level supervisor or manager than the one proposing the action.
2. **Oral Reply.** Oral replies are informal and generally conducted in a face-to-face meeting including the supervisor, a representative from Human Resources, the employee and his/her Union Representative. If the employee submits an oral reply, the deciding official (or designee), shall prepare a written summary for the record (no verbatim transcript of the oral reply is required). A draft of the summary should be provided to the employee (or representative) for the opportunity to comment before it is made a part of the record. The final summary of the oral reply and any comment made by the employee (or representative) regarding the summary shall become a part of the official disciplinary case file maintained by the Human Resources Office.

3. Extensions of Time. The employee or his/her designated Union representative may request an extension request for additional time to provide a response. This request must be in writing to the identified Deciding Official in the proposal before the expiration of the answer period, stating the reason for the request and the amount of additional time needed. The deciding official shall respond to the employee, in writing, either granting or denying (fully or partially) the time extension request.

#### C. Decision

The Employer's final decision shall be made by a higher-level official than the proposing official and must contain the reasons supporting the decision.

1. The deciding official shall issue a written decision within fifteen (15) work days or at the earliest practicable date after receipt of the employee's answer(s), or following expiration of the answer period.
2. The notice of decision must be delivered to the employee at or before the time any action is to be effected.
3. In arriving at a decision, the deciding official should consider only the information, evidence and communication available to the employee for comment or answer throughout the disciplinary process, as well as the employee's reply, and use only the reasons which were included in the proposal notice to support the decision.
4. The deciding official may seek additional information to corroborate/refute any information previously obtained during the process. If considered, the deciding official should make such additional information available to the employee for comment prior to making a decision.
5. The notice of decision will include:
  - a. The specific action decided upon (and applicable effective dates).
  - b. The employee's right to review all evidence used to support the charge(s).
  - c. The charge(s) and specification(s) in the proposal notice which were or were not sustained.
  - d. The consideration given to the employee's answer(s), if any, and to any mitigating and aggravating factors.
  - e. If applicable, the possibility of taking more serious action for any subsequent offenses(s).
  - f. The employee's grievance rights in accordance with Article 47.

#### D. Emergency Suspensions

1. The Employer retains the right to take emergency suspension actions without regard to this Article, but in accord with the procedures established in applicable federal regulations for such suspensions.
2. Grievances concerning suspensions of fourteen (14) days or less shall be filed directly at Step 3, unless the Staff Director or General Counsel took the action. In such cases, the Union may invoke arbitration directly, pursuant to the time limits of Article 48 of this Agreement.

#### **Section 8:** Expedited Arbitration

If an employee, with Union concurrence, elects expedited arbitration for a suspension of seven (7) days or less in lieu of Section 7 above, the procedures set forth in Article 48, Expedited Arbitration shall apply before implementation of the suspension.

#### **Section 9:**

In accordance with 5 USC 7114 and the Privacy Act and upon request from the Union, the Employer will provide an annual list of disciplinary actions and charges issued to FEC bargaining unit employees.

# ARTICLE 44

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## ADVERSE ACTIONS

### Section 1: General

This Article sets forth procedures for the processing of adverse actions as listed in 5 U.S.C. § 7512 for bargaining unit employees who meet the definition of 5 U.S.C. §§ 7511(a)(1)(B) and (C).

The following specific types of adverse actions are covered:

- A. removals;
- B. suspensions of more than fourteen (14) days;
- C. reductions-in-grade;
- D. reductions-in-pay; and
- E. furloughs of thirty (30) days or less.

### Section 2: Investigative Inquiries

1. Before initiating an adverse action, the Employer may conduct an inquiry into any apparent offense to ensure the objective consideration of all relevant facts and aspects of the situation. Ordinarily, this inquiry will be conducted by the employee's supervisor, or a Human Resources Specialist, whichever is appropriate. However, certain situations (particularly those involving possible criminal activity or EEO issues) may warrant an investigation by the Office of the Inspector General, or the Office of Equal Employment Opportunity.

2. Representation

If the Employer conducts an investigative interview with a bargaining unit employee, the Union shall be given the opportunity to have a representative present if:

1. the employee reasonably believes that the examination may result in and adverse action against the employee; and
2. the employee requests representation.

The employee will be notified reasonably in advance of the meeting of the right to representation, which may be representation by the Union, an attorney or other representative of his/her own choosing in connection with the action. If the employee requests a Union representative, reasonable time will be provided to secure and speak with a representative. The role of the representative at such investigative interviews is to assist the employee, but not to interfere with the Employer's legitimate right to conduct its investigation.

### **Section 3:**

Upon request of the employee, the Employer shall give Employees who received a notice of proposed adverse action a copy of the adverse action case file containing any material relied upon by the Employer as the basis for the adverse action within fifteen (15) work days of the request. Such information shall be supplied in a manner consistent with the requirements and provisions of the *Privacy Act*, and shall include relevant exculpatory information developed as part of any investigative reports contained in the file.

### **Section 4: Procedures for Adverse Actions**

#### **A. Where an action is proposed under this Article:**

1. The Employer has the burden of proof to establish by a preponderance of the evidence that the action is warranted. Any such actions must be taken only for such cause as will promote the efficiency of the service.
2. Adverse actions shall be proposed in a timely manner.

#### **B. Notice of Proposed Adverse Actions**

The Employer will provide employees with thirty (30) days advance written notice of a proposed adverse action. An employee against whom an adverse action is initiated is entitled to receive a written proposal which includes the following:

1. Description of the specific incident(s) on which the proposed action is based, and the related charges.
2. If the proposed action is a furlough or suspension, the notice will identify the proposed length of the furlough or suspension. If the proposed action is a proposed down grade, the notice will include the proposed GS level.
3. The name of the management official who will receive the employee's oral or written response.

4. The employee will normally receive up to a total of eight (8) hours of official time to prepare an answer to the proposal.
5. The right to review all evidence used to support the charge(s).
6. The right of the employee, or the representative designated by the employee, to request an extension of the time to respond.
7. The name and contact information of the designated Deciding Official.
8. The name and contact information of the NTEU Chapter 204 Union President, or his/her designee.
9. A statement that the employee has the right to be represented by the Union or an attorney or other representative of his own choosing.

#### C. Employee Response

The employee shall be provided fifteen (15) work days from receipt of the notice of adverse action to answer the charges orally and/or in writing. The procedures for providing oral and written replies to the proposal are as follows:

1. **Written Reply.** An employee may choose to submit a written reply to the proposed adverse action within the time limits prescribed above. The employee may submit affidavits and/or other documentary evidence in support of the answer. The reply shall be made to the identified Deciding Official in the proposal who is a higher-level supervisor or manager than the one proposing the action.
2. **Oral Reply.** Oral replies are informal and generally conducted in a face-to-face meeting including the supervisor, a representative from Human Resources, the employee and his/her Union Representative. If the employee submits an oral reply, the deciding official (or designee), shall prepare a written summary for the record (no verbatim transcript of the oral reply is required). A draft of the summary should be provided to the employee (or representative) for the opportunity to comment before it is made a part of the record. The final summary of the oral reply and any comment made by the employee (or representative) regarding the summary shall become a part of the official adverse action case file maintained by the Office of Human Resources.
3. **Extensions of Time.** The employee or his/her designated Union representative may request an extension request for additional time to provide a response. This request must be in writing to the identified Deciding Official in the proposal before the expiration of the answer period, stating the reason for the request and the amount of additional time needed. The deciding

official shall respond to the employee, in writing, either granting or denying (fully or partially) the time extension request.

#### D. Decision

1. The Employer's final decision shall be made by a higher-level official than the proposing official and must contain the reasons supporting the decision. After considering the evidence, the employee's response, if any, the Douglas factors or other aggravating/mitigating factors, the Deciding Official shall take appropriate action.
2. In determining the appropriate penalty in an action taken under this Article, the Employer will apply the factors required by the Merit Systems Protection Board in *Douglas v. Veterans Administration* and subsequent Board and court precedent interpreting and applying the "Douglas factors." The Douglas Factors are as follows:
  - a. The nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional, technical, inadvertent, or was committed maliciously or for gain, or was frequently repeated;
  - b. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
  - c. The employee's past disciplinary record;
  - d. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
  - e. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties;
  - f. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
  - g. Consistency of the penalty with any applicable agency table of penalties;
  - h. The notoriety of the offense or its impact upon the reputation of the agency;
  - i. 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;

- j. Potential for the employee's rehabilitation;
- k. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, harassment or bad faith, malice or provocation on the part of others involved in the matter; and
- l. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

### 3. Notice of Decision

The deciding official shall issue a written decision within thirty (30) days of receipt of the employee's response or at the earliest practicable date after receipt of the employee's response, or following expiration of the response period.

- a. The notice of decision must be delivered to the employee at or before the time any action is to be effected.
- b. In arriving at a decision, the deciding official should consider only the information, evidence and communication available to the employee for comment or answer throughout the adverse action process, as well as the employee's reply, and use only the reasons which were included in the proposal notice to support the decision.
- c. The deciding official may seek additional information to corroborate/refute any information previously obtained during the process. If considered, the deciding official should make such additional information available to the employee for comment prior to making a decision.
- d. The notice of decision will include:
  - i. The specific action decided upon (and applicable effective dates).
  - ii. The employee's right to review all evidence used to support the charge(s).
  - iii. The charge(s) and specification(s) in the proposal notice which were or were not sustained.
  - iv. The consideration given to the employee's answer(s), if any, and to any mitigating and aggravating factors.

- v. If applicable, the possibility of taking more serious action for any subsequent offenses(s).
- vi. The employee's appeal rights under 5 USC 7512 to file an appeal to the Merit Systems Protection Board (MSPB) or their arbitration rights under Article 48. The employee has the right to raise the matter of an adverse action under one procedure, but not both.

### **Section 5:**

Adverse actions imposed by the Employer will be administered as timely as possible; however, when an employee has been advised that he or she is/was the subject of an investigation, and a determination is made not to propose an adverse action based on its review of an investigation conducted in accordance with Section 2 of this Article, the designated proposing official will issue the appropriate letter (i.e., clearance or closed without action) to the employee within a timely fashion, normally within fifteen (15) days of when the case involving the employee is closed. However, the Employer retains the right to re-open the matter following the conclusion of other investigations. The letter will not be placed in the employee's Official Personnel Folder (OPF) unless requested by the employee in writing.

### **Section 6: Crime Provision**

In accordance with 5 U.S.C. § 7513(b)(1), the Employer is not required to provide a 30-day advance written notice period before imposition of an adverse 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. The Employer may require the employee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer within such time as under the circumstances would be reasonable, but not less than seven (7) days. When the circumstances require immediate action, the Employer may place the employee in a non-duty status with pay for such time, not to exceed ten (10) days, as is necessary to effect the action.

### **Section 7: Indefinite Suspensions**

In circumstances where the Employer proposes an indefinite suspension pending an investigation, the Employer will follow the procedures set forth in this Article and 5 CFR 752.404.

### **Section 8: Disputes**

- A. The final decision to effect an adverse action is subject to immediate arbitration by the Union without prior resort to the grievance procedure, so long as

arbitration is invoked in accord with the time limits and procedures of Article 48 of this Agreement.

- B. Employees may appeal actions taken pursuant to this Article to the Merit Systems Protection Board (MSPB) under the provisions of 5 U.S.C. § 7513(d), or the Union may pursue the matter via the negotiated arbitration procedures. The employee may not utilize both procedures, but must elect one or the other in writing and in accordance with established time limits.
- C. An arbitrator hearing a grievance regarding an action taken pursuant to this Article must sustain the action if supported by a preponderance of evidence, and if the procedures utilized are free of harmful error.

# ARTICLE 45

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## MID-TERM NEGOTIATIONS

### Section 1: Agency-Initiated Mid-Term Negotiations

The Union recognizes that the Agency has the right to exercise management rights as set forth in the Statute during the life of this Agreement and, in accordance with applicable law, rule, regulation, and this Agreement, to initiate changes that may affect conditions of employment of bargaining unit employees, including changes in personnel policies or practices or other matters affecting working conditions not covered by this agreement.

The Agency recognizes that the Union has the right to bargain over the substance of negotiable changes in personnel policies and working conditions, the procedures which the Agency will observe in exercising management rights, and/or appropriate arrangements for employees adversely affected by the exercise of the Agency's management rights. This in no way waives any of the Union's rights to negotiate to the maximum extent allowable by law nor does it require the Agency to bargain the substance of permissive subjects of bargaining.

#### A. Notice

When the Employer wishes to change any personnel policy or practice not covered or controlled by the terms of this Agreement, the Employer will notify the NTEU Chapter President or his/her designee(s), in writing if the contemplated change will have more than a de minimis impact on the terms and conditions of employment of bargaining unit employees.

This notice will be sent to the Union at least fifteen (15) workdays prior to the proposed effective date of the change; however, in the case of an operational necessity, the Agency shall advise the Union in writing of the nature of the necessity and provide the Union with as much reasonable advance notice of the intended change as practicable, and the Union may pursue whatever course(s) of action as may be available under law, rule or regulation.

This notice will include the following:

1. The scope and nature of the proposed change in conditions of employment;
2. The certainty of the change; and
3. The planned timing of the change.

B. Briefing

Within fifteen (15) calendar days of receipt of such notice, the Union may either request to negotiate or request a briefing.

C. Proposals

Within fifteen (15) calendar days of submission of a request to negotiate, or the date of a briefing (whichever is later), the Union will submit its proposals.

**Section 2: Union-initiated Mid-Term Negotiations**

After six months from the effective date of this Agreement and for the term of this Agreement, the Union may initiate bargaining on any term and condition of employment of bargaining unit employees not covered by this Agreement or other agreement between the parties.

A. Notice

When the Union wishes to initiate bargaining under this Section, it will notify the Agency's Director of Human Resources in writing. This notice will contain the Union's proposals for the change sought.

B. Agency Response to Notice & Briefing

Within fifteen (15) calendar days of receipt of the Union's proposals, the Agency will respond to the Union's notice in writing or submit a request to the Union for a briefing. If a briefing is requested, the Agency will submit its proposals to the Union within fifteen (15) calendar days after the briefing.

**Section 3: Negotiations**

Unless otherwise agreed by the parties, negotiations will begin no later than thirty (30) calendar days after the submission of proposals or, in the case of Union-initiated bargaining, after any briefing requested by the Agency under Section 2(B) above.

Negotiations will be held at the FEC or some other site mutually agreed to by the parties, and will be conducted during the regular administrative workday of the parties.

The Union will be entitled to the same number of bargaining unit employees on official time as the number of individuals designated as representing the agency for such purposes.

#### **Section 4: Impasse**

Either party may request the assistance of the Federal Mediation and Conciliation Service (FMCS) to resolve an impasse in bargaining. Upon certification by the Federal Mediation and Conciliation Service of an impasse between the parties in connection with these negotiations, the dispute shall be forwarded to the Federal Service Impasses Panel (FSIP) for resolution.

#### **Section 5: Mid-term Agreements**

All mid-term agreements are tentative until confirmed in writing. Unless otherwise agreed, agreements reached will be reduced to writing and executed by both Parties. Mid-term agreements will set forth an "effective date" and a "termination date." The effective date will be no sooner than thirty-one days from execution (or upon Agency head approval) and the termination date will be no later than the termination date of this Agreement.

Proposals declared non-negotiable that are subsequently found to be negotiable will be timely negotiated at the request of either Party.

Copies of agreements executed pursuant to this Article will be made available to bargaining unit employees by posting on the Agency's intranet site. On, or shortly after, the effective date of any agreement negotiated under this Article, the Employer will send an email to employees attaching the agreement, and notifying employees of the change provided in the agreement.

All mid-term agreements, including those extended or renegotiated must be consistent with the terms of this Agreement, any existing laws, and Government-wide rules and regulations.

# ARTICLE 46

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## DUES WITHHOLDING

**Section 1:** This Article is for the purpose of permitting eligible employees who are members of the Union to pay dues through the authorization of voluntary allotments from their compensation. This Article covers all eligible employees:

- A. who are members in good standing in the Union;
- B. who have voluntarily completed Standard Form 1187 (Request and Authorization for a Voluntary Allotment of Compensation for Payment of Employee Organization Dues); and
- C. who receive compensation sufficient to cover the total amount of the allotment.

**Section 2:** Union's Rights, Roles, and Responsibilities

- A. Remittance check(s) will be made payable to the National Treasury Employees Union and will be mailed to the following:

Administrative Controller  
The National Treasury Employees Union  
1750 H Street, N.W.  
Washington, D.C. 20006

- B. The NTEU National President or any Chapter officer who has submitted proper notification to the servicing Office of Human Resources is authorized to make the necessary certification of Standard Form 1187.
- C. The Union agrees to assume responsibility for:
  - 1. informing and educating its members on the voluntary nature of the system for allotment of Union dues, including the conditions under which the allotment may be revoked. Employees may revoke their dues withholding by submitting an SF 1188 (or memorandum) to the Office of Human Resources, Payroll Office, or Chapter 204. Revocations are processed once a year, effective the first pay period after September 1st. Revocations must be received by the agency or union by close of business, September 1st of each year (or next business day if September 1st is a non-work day) in order to be effective the next pay period after September 1st of that year.

2. purchasing and distributing to its members Standard Form 1187 and the accompanying statement required under the *Privacy Act of 1974*.
3. informing the Employer of changes in Subsection (A) and (B) of this Section.
4. forwarding properly executed and certified Standard Form 1187 to the Commission's Office of Human Resources on a timely basis.
5. forwarding an employee's revocation (memorandum or Standard Form 1188, Revocation of Voluntary Authorization Allotment of Compensation for Payment of Employee Organization Dues) to the Office of Human Resources when such revocation is submitted to the Union.
6. informing the Office of Human Resources of the name of any participating employee who has been expelled or ceases to be a member in good standing in the Union within ten (10) days of the date of such final determination.
7. informing the Director of Human Resources of any change in the amount of membership dues.
8. returning magnetic reel tape(s) with protector to the Employer within a reasonable timeframe.

**Section 3: Employer's Rights, Roles, and Responsibilities**

- A. The Employer agrees that it is responsible for processing voluntary allotments of dues in accordance with this Article.
- B. The Employer agrees to assume responsibility for:
  1. Having the Office of Human Resources, upon receipt of properly certified Standard Form 1187, stamp the date it was received on the back of the Form and forward it to the Payroll Office within seventy-two (72) hours of its receipt.
  2. Withholding dues on a bi-weekly basis.
  3. Notifying the employee and the organization when an employee is not eligible for an allotment because the employee is not included under the recognition in the appropriate exclusively recognized unit on which the Agreement is based.
  4. Withholding new amounts of dues upon certification from the NTEU National President so long as the amount has not been changed during the past twelve (12) months.

5. Having the Office of Human Resources, upon receipt of a properly executed Standard Form 1188 or other revocation document, stamp the date received on the Form or other revocation document and forward the original copy to the Payroll Office seventy-two (72) hours after receipt.
6. Having the Office of Human Resources provide local NTEU Chapters with a copy of Standard Form 1188 or other revocation documents received within seventy-two (72) hours after receipt.

**Section 4:** The parties to this Agreement agree that:

- A. The amount of the dues to be deducted as allotments from compensation may not be changed more frequently than once in twelve (12) months.
- B. The Union will pay no fee for these services.

**Section 5:** The Employer agrees to deduct back Union dues from a back pay award (including back pay awarded in a settlement agreement) and remit such dues to the Union when the employee has a voluntary allotment for deduction of Union dues in effect at the time of the action giving rise to the back pay award.

# ARTICLE 47

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## GRIEVANCE PROCEDURE

### Section 1: Coverage

For the purpose of this Collective Bargaining Agreement, a grievance means any complaint filed:

- A. by any bargaining unit employee, concerning any matter relating to the terms and conditions of employment of the employee;
- B. by the Union, concerning any matter relating to the employment of any bargaining unit employee; or
- C. by any employee, the Union, or the Agency, concerning;
  - 1. the effect or interpretation, or claim of breach of this Collective Bargaining Agreement, or
  - 2. any claim of violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.
- D. The Employer need not accept any grievance that is filed without a reasonable expectation of a remedy or which is filed solely for the purpose of harassment.

### Section 2: Exclusions

The following matters are excluded from coverage under the grievance procedure and will be rejected if grieved. However, questions concerning application of procedures may be addressed by the Union representative to the Labor Relations Specialist or designee.

- A. non-selection from a group of properly ranked and certified candidates in filling of positions (5 U.S.C. § 7106(a)(2)(c));
- B. non-adoption of a suggestion;
- C. claimed violations of Subchapter III of Chapter 73 of Title 5, U.S.C. (relating to prohibited political activities);
- D. retirement, life insurance, or health insurance (5 U.S.C. § 7121(c)(2));

## **Section 6: Exchange of Information**

The Union may submit requests for information pursuant to 5 USC 7114. When this occurs, the Employer agrees to share information with the Union which is both necessary and relevant to the issues raised within the scope of a grievance filed under this Article, to the extent that the information is available at the time of the request, and its disclosure is not otherwise precluded by statute or regulation. This information should be provided to the union within a reasonable period of time before the grievance step meeting. The Union will not be required to proceed to the next step meeting while a response for information is still pending.

## **Section 7: Filing Procedures for Employee Grievances**

- A. Time Frame. The grievance must be received either electronically or in hard copy (date stamped) within twenty (20) work days after the date of the act or occurrence of the matter out of which the grievance arose, or twenty (20) work days after the date the aggrieved should reasonably have been aware of the occurrence of the matter out of which the grievance arose. A grievance submitted by electronic mail will be deemed untimely if it is dated/time stamped after the 20<sup>th</sup> work day. The date of the occurrence, or date when the aggrieved should reasonably have become aware of the occurrence, shall not be counted in computing timeliness. Any grievances not presented within that period will not be capable of presentation, or consideration at a later date, unless the parties mutually agree to waive the time limits.
- B. The parties agree that by mutual consent in writing:
  - 1. the time limits in this Article may be extended; and/or
  - 2. any step of this grievance procedure may be waived.
- C. Failure on the part of the Employer to observe the time limits for providing a decision on the grievance shall have the effect of the grievance being denied at that step, at which point the grievance may be appealed to the next step. Failure on the part of the grievant to observe time limits for appealing to the next step shall have the effect of terminating the grievance.
- D. Format: The written grievance must contain the following:
  - 1. Employee's Name/Union
  - 2. Division;

3. Date of the alleged act or occurrence;
  4. Description of the facts of the grievance;
  5. Provision of the agreement allegedly violated and how; the nature of the grievance citing the specific Article of the Agreement, the provision of a mutually agreed upon written agreement outside the contract, or law allegedly misinterpreted or violated;
  6. Relief sought by Employee(s); and
  7. Employee signature(s) or Union representative's signature with an accompanying letter of designation of representative, and date.
- E. Missing Information: A grievance missing any of the abovementioned information will be returned to the Employee/Union who will have five (5) work days from the date received to furnish the additional information and return it to Management. Failure to meet time limits will automatically cancel the grievance.
- F. A grievance may also be filed by the Union as an institution claiming the agency violated misinterpreted or misapplied law, rule, regulation, or the terms of this Agreement. While not required to request personal relief for any employee, the Union must identify the remedy it seeks in filing the grievance. Failure to do so will result in denial of the grievance.
- G. It is understood that the Union's right to grieve pursuant to Section 7(F) of this Article does not apply to the Union grievances filed with or for individual employees. If such a grievance by the Union is filed incorrectly as an institutional grievance, the Union shall have five (5) work days from the date of the challenge to remedy the error should one exist.

### **Section 8: Grievability and Arbitrability Disputes**

- A. If the Employer alleges that a grievance is not grievable and/or is not arbitrable, then the Employer shall notify the Union in writing, stating the reasons for such a determination.
- B. When the Employer alleges an issue is non-grievable or non-arbitrable, the Union will have five (5) work days to revise the grievance if it wishes. When revised, the grievance will be resubmitted at the level at which the issue was raised and proceed as a normal grievance.

- C. If a question of grievability is raised and the Union does not revise the grievance, the grievance will proceed through the negotiated grievance procedure with the question of grievability joined to the grievance.

**Section 9: Types of Grievances for Employee Grievances**

- A. Individual Grievance: Grievance filed by an employee concerning any matter relating to the employment of the employee. This may include grievances related to the affect, interpretation, or a claim of a breach of a collective bargaining agreement as to that employee; or any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting the employee's conditions of employment.
- B. Mass Grievance: Several grievances filed by different employees over an identical matter may be combined and treated as a single grievance upon agreement of the Employees and the Union. For example, "all paralegals who occupy offices on the sixth floor of the 999 E Street building" - who do not share the same immediate supervisor but whose grievances involve a similar fact pattern or a similar issue.
- C. Institutional grievance means any complaint by the Union concerning the effect or interpretation, or a claim of breach of the provisions of this Agreement relating to the rights and benefits that accrue to the Union as the exclusive representative of bargaining unit employees.

**Section 10: Step 1**

Grievant should file Step 1 grievances in accordance with Section 7 of this Article. An additional copy of the grievance will be filed with the Director of Human Resources or his or her designee.

**Section 11: Response to Step 1**

Management shall issue a final written response to the Employee/Union and Union representative (if designated) within 10 work days from receipt of the Step 1 grievance. The written response shall include:

- A. Rationale for the decision made;
- B. Name, Title, and Telephone Number of the Management Official for the Step 2 grievance.

- E. suspensions or removals under Section 7532 of Title 5, U.S.C. (5 U.S.C. § 7121(c)(3));
- F. examinations, certifications, or appointments (5 U.S.C. § 7121(c)(4));
- G. classification of any position which does not result in the reduction in grade or pay of an employee (5 U.S.C. § 7121(c)(5));
- H. a warning or proposal of an action which, if effected, would be grievable under this procedure or appealable under a statutory procedure;
- I. Complaints of discrimination filed under the statutory EEO complaint procedure.

### **Section 3: Representation**

Any Employee desiring representation under the negotiated grievance procedure at any step may have only Union representation or someone appointed by the Union. A grievance may be undertaken by an employee or a group of employees. They may personally present a grievance and have it resolved without representation by the Union provided the Union is given an opportunity to be present at all discussions between Management and the Employee(s) in the grievance process and resolutions. The Union will be given reasonable advance notice, generally two (2) work days, of such meetings. The parties agree that an adjustment must not be inconsistent with the terms and conditions of this Agreement.

### **Section 4: Resolution**

Most grievances arise from misunderstandings or disputes that can be resolved promptly and satisfactorily on an informal basis at the immediate supervisory level. The Employee and their Immediate Supervisor, or the Management Official who has the authority to resolve the matter, are encouraged to meet to discuss any cause of dissatisfaction in an effort to resolve the matter prior to raising the issue as a grievance. The Union is also encouraged to have discussions with Management in an effort to resolve matters prior to filing a grievance in the matter.

### **Section 5: Reprisal Protection**

The Employer and the Union recognize that employees, designated representatives, and employee witnesses at arbitration hearings are free from unlawful restraint, interference, coercion, discrimination, intimidation, or reprisal arising out of their initiation of, or participation in, grievance proceedings.

If the grievant does not receive an answer within the designated time limit for the Step 1 grievance, it may be elevated by the Employee/Union or Union representative (if designated) to Step 2.

#### **Section 12: Step 2**

If the grievant(s) is not satisfied with the Step 1 decision, the grievant(s) may appeal the grievance in writing to the next higher level manager within five (5) work days of the receipt of the Step 1 decision. An additional copy of the grievance will be filed with the Director of Human Resources or his or her designee.

#### **Section 13: Response to Step 2**

Management shall issue a final written response to the Employee/Union and Union representative (if designated) within 10 work days from receipt of the Step 2 grievance.

The written response shall include:

- A. Rationale for the decision made;
- B. Name, Title, and Telephone Number of the Management Official for the Step 3 grievance.

If the grievant does not receive an answer within the designated time limit for the Step 2 grievance, it may be elevated by the Employee/Union or Union representative (if designated) to Step 3.

#### **Section 14: Step 3**

If the grievant(s) is not satisfied with the Step 2 decision, the grievant(s) may appeal the grievance in writing to the Director of Human Resources for referral to the appropriate deciding official-within five (5) work days of receipt of the decision.

#### **Section 15: Response to Step 3**

Management must render a written decision within ten (10) work days from receipt of the Step 3 grievance. The Employer agrees to provide directly to the appropriate Union representative(s) one (1) copy of all step decisions rendered on grievances filed under the provisions of this Article.

#### **Section 16: Institutional Grievance Procedure.**

- A. Filing Provisions

## 1. Format

- a. A grievance filed by the Union against the agency will be presented either electronically or in hard copy to the Director of Human Resources, with a copy to the Staff Director, on the Official Grievance Form (see Appendix VI).
- b. Grievances must cite the Agreement provision alleged to have been violated;
- c. Describe the violation with sufficient specificity to advise the Employer of the nature of the harm;
- d. The Union may name the management official it believes responsible for the resolution of the matter; and
- e. State the remedy sought.

## 2. Time Frames

- a. Institutional grievances must be written in accordance with the formatting provisions in this section and submitted within twenty (20) work days of the of the act or occurrence of the action that is the subject of the grievance or within twenty (20) work days of the date the Union became aware or reasonably should have become aware of the action. A grievance submitted by electronic mail will be deemed untimely if it is dated/time stamped after the 20<sup>th</sup> work day.
- b. At the agency's option, a meeting may be held within ten (10) work days with the Union (up to three (3) employee representatives and two (2) non-employee representatives) to discuss the grievance. The meeting will be conducted by an agency official having the authority to resolve the matter or to effectively recommend the resolution of the matter.
- c. The agency will issue a written response to the grievance within fifteen (15) work days of the grievance meeting if one is held. If the agency fails to respond in a timely manner, the Union may excuse the delay and wait for a response or it may invoke arbitration.

### **Section 18:** Grievances Filed by the Employer

- A. Grievances filed by the employer means any compliant concerning any claimed violation of 5 U.S.C. § 7116(b)(5)-(7); or complaints by the Employer concerning the effect or interpretation, or claim of breach of this Agreement relating to management rights.

## B. Filing Provisions

1. Grievances initiated by the Employer shall be signed by the Staff Director or Director of Human Resources and filed in writing either electronically or in hard copy to the NTEU Local Chapter 204 President;
2. Grievances must describe the violation with sufficient specificity to advise the Union of the nature of the harm; and
3. State the remedy sought.

## C. Time Limits

Grievances filed by the employer must be written in accordance with the formatting provisions in this section and submitted within twenty (20) work days of the date of the event being grieved, or the date the Employer should reasonably have become aware of the event. Upon request of either party, representatives of the Union and the Employer will meet within five (5) work days. A written answer from the Chapter President or his or her designee will be provided to the Employer within ten (10) work days after the filing of the grievance or the meeting if held.

## Section 19: Discrimination Allegations

- A. Employees who believe they have been illegally discriminated against on the basis of race, color, religion, sex, national origin, age, or disability, or on the basis of their genetic information (as defined by the Genetic Information Nondiscrimination Act), have the right to raise the matter under the statutory EEO Complaint procedure or the negotiated grievance procedure of this Agreement, but not both. Employees shall be deemed to have exercised their right of choice at such time as they file a formal EEO complaint or file a timely grievance under this Article.
- B. When the employee chooses to raise the matter under the negotiated grievance procedure, the grievance shall specify the specific nature of the discrimination (e.g., race, religion, or physical or mental disability), the facts upon which the allegation is based, and the names of the allegedly discriminating official(s). Pursuant to Section 19(A) above, this information must be raised at Step 1 of the grievance procedure, provided, however, that the parties may mutually agree to join the allegation to a grievance in process. In cases arising under Article 20, 34, or 43 of this Agreement in which discrimination is alleged, this information must be presented in writing at the oral/written reply stage, even if no other oral/written reply is presented, in order for the allegation of discrimination to be grieved or arbitrated under the terms of this Agreement.

**Section 20:** Terminations of Grievances

Grievances will be terminated:

- A. At the Grievant's request;
- B. Upon termination of the Grievant's employment with the Agency, unless personal relief to the Grievant may be granted after termination of employment; or
- C. When the Agency has granted the remedy requested.

# ARTICLE 48

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## ARBITRATION

### Section 1: General

Any unresolved grievance processed under Article 47 of this Agreement may, upon written notification, be submitted to arbitration unless otherwise indicated.

### Section 2: Grievability and Arbitrability

The arbitrator shall not make a ruling on the merits of the case if he/she finds that the grievance is not grievable or arbitrable.

### Section 3: Arbitrator's Authority

The parties and the arbitrator shall be governed by the Voluntary Rules of the American Arbitration Association (AAA), the Federal Mediation & Conciliation Service's (FMCS) prescribed arbitrator rules of professional responsibility. The arbitrator shall be governed by the NAA/AAA/FMCS Code of Professional Responsibility for Arbitrators of Labor-Management Disputes. The arbitrator shall have no authority to alter, amend, add to or subtract from the negotiated agreement. The arbitrator shall be bound by the following:

- A. the provisions of this Agreement;
- B. laws and orders in effect when the hearing is held; and
- C. the regulations of appropriate authorities (e.g., government-wide rules or regulations), including policies set forth in Title 5 of the Code of Federal Regulations in existence at the time this Agreement was approved.

The arbitrator shall have the authority to make all arbitrability and/or grievability determinations. The arbitrator shall make grievability and/or arbitrability determinations prior to addressing the merits of the original grievance.

The arbitrator's decision shall be final, binding and the arbitrator shall possess the authority to make an aggrieved employee whole to the extent such remedy is not limited by law, including the authority to award back pay and interest in accordance with 5 CFR Part 550, Subpart H (Back Pay), reinstatement, retroactive promotion where appropriate, and to issue an order to expunge the record of all references to a

disciplinary, adverse, or unacceptable performance action, if appropriate. Nothing in this Article shall prohibit either party from appealing an arbitrator's decision to the FLRA.

#### **Section 4: Invoking Arbitration**

Such arbitration invocations must be sent via certified mail or electronic mail to the Director of Human Resources, or his/her designee, or to the NTEU Chapter President, or his/her designee, as appropriate. Any invocations must be made within fifteen (15) work days after receipt of the final decision rendered in a grievance filed under Article 47 or within fifteen (15) work days of notice of a final Agency action subject to direct arbitration.

A party may invoke arbitration after receipt of a final Agency decision pursuant to Section 1 of this Article.

#### **Section 5: Arbitrator Selection Procedures**

Within five (5) work days from invoking arbitration, the invoking party may request a list of five (5) impartial arbitrators from the Federal Mediation and Conciliation Service (FMCS), fees for this service shall be incurred by the requesting party. Within ten (10) work days from receiving a list of five impartial arbitrators, the parties shall meet to select an arbitrator.

If the parties cannot agree upon an arbitrator, the parties shall each strike one (1) name from the list alternately and then repeat this procedure until only one name remains. The person whose name remains shall be selected as the arbitrator. The party striking the first name from the list in each case shall be chosen by a coin toss, with the winner of the toss picking the party to strike first. At any time the parties may agree to obtain a new list of arbitrators from FMCS, or from another impartial source.

The party invoking arbitration shall contact the other Party within five (5) work days after receipt of the list for the purpose of selecting an arbitrator.

Once selected, an arbitrator shall be contacted by the parties within a reasonable time period and the hearing scheduled. If a hearing has not commenced within six (6) months of selection, due to a party's refusal or failure to participate timely in the selection of an arbitrator, the other party may request that the arbitrator order a hearing date.

#### **Section 6: Expedited Arbitrations**

In the event the parties agree to utilize expedited arbitration, the following procedures shall apply:

- A. No briefs shall be filed.

- B. The parties shall provide to the arbitrator a pre-hearing synopsis of the case to include a statement of the issue(s), the Article(s) in question, a brief outline of each party's position, and any stipulations.
- C. Ordinarily no transcripts will be made at an expedited hearing; however, if one party requests a transcript, that party will bear the entire cost of the transcription services and that party's copies. If both parties seek a transcript, the transcription services and copy costs will be shared.
- D. The arbitrator may issue a bench decision, followed by a written award including a brief explanation within ten (10) work days of the hearing. Otherwise, the arbitrator will issue a complete written decision, within ten (10) work days of the close of the hearing.
- E. Instead of having an expedited hearing, the parties may mutually agree to utilize the following alternative expedited proceedings:
  - 1. Written submissions and arguments from each party, which present their respective cases, without a hearing.
  - 2. Hearing by telephone with briefs. If the parties determine that the expedited hearing will be conducted by telephone, any evidence to be provided to the arbitrator must be sent to the arbitrator by fax, electronic mail, hand delivery, or one-day mail at least seven (7) days prior to the hearing date. Such evidence shall simultaneously be served on the opposing party.

## **Section 7: Matters for Expedited Arbitration**

The provisions of Section 6 above shall apply to grievances over the following issues:

- A. Disciplinary actions that result in suspension, demotion, or removal;
- B. Union Time Issues;
- C. Reimbursement, including Overtime;
- D. Denial of Leave Requests, including AWOL Charges;
- E. Dues Withholding Issues;
- F. Outside Employment Issues;
- G. Health & Safety Issues, involving an immediate risk to employees; and
- H. Any other matters which the parties mutually agree upon.

**Section 8: Non-Expedited Arbitrations.** When expedited procedures are not used, the following procedures shall apply:

- A. A transcript shall be made of the arbitration, with the costs shared unless the grievant substantially prevails as determined by the arbitrator.
- B. Post-hearing briefs shall be filed within twenty (20) work days of the close of the hearing, unless mutually agreed otherwise.
- C. The arbitrator shall strive to issue a written award decision within twenty (20) work days of the close of the record.

**Section 9: Cancellation Fees**

Generally, fees for cancellations of arbitration(s) will be split equally by both parties unless the parties agree to otherwise.

**Section 10: Arbitrator's Fees**

The arbitrator's fees and expenses, including transcript fees for arbitrations that are not expedited, shall be borne equally by the parties, unless the grievant substantially prevails as determined by the arbitrator. In such cases, the Employer shall pay all of the regular fees and expenses including travel expenses of the arbitrator hearing the case.

**Section 11: Official Time for Arbitration**

The grievant and a reasonable number of Chapter representatives shall be on Official Time while participating in the arbitration hearing. Employee witnesses shall be on Official Time for the time spent testifying, to include reasonable time in transit between the work site and the hearing room.

**Section 12: Attorney Fees**

Arbitrators and other authorities acting pursuant to this agreement are advised to follow the provisions of 5 U.S.C. § 5596(b) in awarding attorney fees.

# ARTICLE 49

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## RESOLUTION OF STATUTORY APPEALS

**Section 1:** Pursuant to the provisions of the *1978 Civil Service Reform Act*, it is agreed that employees may elect either to file a grievance through the negotiated procedure or to file a statutory appeal over the following matters:

- A. prohibited personnel practices under 5 U.S.C. § 2302(b)(1) (relating to discrimination);
- B. reductions in grade or removals based on unsatisfactory performance under 5 U.S.C. § 4303 (Article 20); and
- C. reductions in grade or pay, removals or suspensions for more than fourteen (14) days under 5 U.S.C. § 7512 (Article 44). An employee may elect one (1) procedure or the other, but not both. An employee shall be deemed to have exercised his/her option to raise a matter either under the applicable statutory appeal procedure or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of Article 47 of this Agreement, whichever occurs first.

**Section 2:** The Union has the option of deciding whether or not to appeal an employee's grievance in these matters to binding arbitration. An appealing employee is on notice that should he/she file a grievance through the negotiated grievance procedure and the Union decides not to appeal the case to arbitration, then the appealing employee will have no recourse to the statutory appeal authority.

# ARTICLE 50

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## **CONTINUING LEGAL EDUCATION PROGRAMS**

**Section 1:** Attorneys shall be granted administrative leave to attend mandatory continuing legal education (CLE) courses. The amount of hours annually granted to an attorney to attend such courses shall be equal to the number of continuing legal education credits required for the jurisdiction in which the attorney maintains an active bar membership. For example, the Commonwealth of Virginia currently requires attorneys to receive twelve (12) hours of continuing education credits every year. Accordingly, an attorney who maintains an active bar membership in the Commonwealth of Virginia will be granted twelve (12) hours of administrative leave each year to attend mandatory continuing education classes.

**Section 2:** Attorneys maintaining active bar memberships in two (2) or more jurisdictions shall be granted administrative leave equal to the lesser amount of continuing legal education credits required by the various jurisdictions. For example, the Commonwealth of Virginia currently requires attorneys to receive twelve (12) hours of continuing education credits every year while the State of Missouri currently requires attorneys to receive fifteen (15) hours of continuing education credits. An attorney maintaining active bar memberships in both the Commonwealth of Virginia and the State of Missouri would be granted twelve (12) hours of administrative leave.

**Section 3:** The administrative leave terms of this Article do not apply to training courses paid for by the Employer under Article 21.

## ARTICLE 51

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### DAY CARE

The parties agree that the availability of day care centers in the vicinity of the FEC would be of potential value to employees of the Commission. Therefore, the parties agree that, as part of the quarterly Labor-Management Relations (LMR) meeting process, a sub-committee will be established to collect and disseminate information regarding the availability of day care centers in the area.

# ARTICLE 52

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## **DURATION AND TERMINATION**

### **Section 1: Agency-Head Review and Ratification**

This Agreement shall be submitted to the Commission for agency-head review immediately after receiving notice of ratification by the membership of NTEU Chapter 204. The Agreement shall become effective thirty (30) days after receipt of the aforementioned notice unless any portion is disapproved pursuant to 5 U.S.C. § 7114(c). If the agency-head disapproves any provision of this Agreement, the Parties, by mutual agreement, may implement the provisions of this Agreement that were not disapproved (in whole or in part).

### **Section 2: Term**

This Agreement shall remain in full force and effect for a period of three (3) years from the effective date. Thereafter, this Agreement shall be automatically renewed annually unless either party gives written notice to the other not earlier than ninety (90) calendar days and not later than sixty (60) days prior to the expiration date, and each subsequent anniversary date, that it desires to terminate, amend or modify this Agreement. Such written notice shall be accompanied by proposed amendments or modifications to the Agreement being forwarded to the other party.

### **Section 3: Mid-term Re-opener**

No sooner than eighteen (18) months, but no later than nineteen (19) months, from the effective date of this Agreement, either party may reopen any three (3) Articles by submitting a written proposal to the Chapter President or Director of Human Resources, as appropriate. Negotiations shall commence within thirty (30) days of the submission of a proposal by either party.

### **Section 4: Severability**

In the event that any provisions of this Agreement shall at any time be found or declared to be invalid by the FLRA or a court of competent jurisdiction, or through any government regulation or decree, such decision shall not invalidate the entire Agreement. It is the express intention of the Employer and the Union that all provisions not found or declared to be invalid shall remain in full force and effect for the duration of this Agreement.

# ARTICLE 53

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## **PRECEDENCE OF LAW AND REGULATION**

### **Section 1: Conflict with Laws and Regulations**

In the administration of all matters covered by this Agreement, the parties are governed by the following: existing or future laws; Government-wide rules or regulations in effect upon the effective date of this Agreement; and Government-wide rules or regulations issued after the effective date of this Agreement that do not conflict with this Agreement.

To the extent Government-wide rules or regulations issued after the effective date of this Agreement conflict with the contract provisions, the contract supersedes until it expires, except that the parties may renegotiate any conflicting provisions under Article 45.

### **Section 2: Conflict with Policies During the Life of this Agreement**

To the extent that provisions of the Employer's directives or policies conflict with this Agreement and impact the terms and conditions of employment of bargaining unit employees, the provisions of this Agreement will govern.

# ARTICLE 54

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## **WORKSPACE, OFFICE MOVES AND FURNITURE**

### **Section 1: Advance Notice**

For the purposes of this Article, before the Employer submits a formal request to the General Service Administration (GSA) to move to a specific location, co-locate with another agency, open a new office at a specific location, expand and/or contract for any specific office space, the Employer will give notice to the NTEU chapter president or his/her designee. The Union will be afforded an opportunity to provide feedback to management prior to the move of bargaining unit employees into the new space.

### **Section 2: Walk-Through**

The Union will be afforded an opportunity to participate when the appropriate “walk-through” of new space (or reconfigured space) is to be conducted. Any questions and/or comments concerning the space will be directed to the management spokesperson during and after the walk-through.

### **Section 3: Formal Notice**

Formal notice of changes to employees’ furniture, workspace, and/or office moves, including floor plans, will be provided to NTEU to the extent required by law and in accordance with Article 45 Mid-Term Negotiations.

# ARTICLE 55

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## LABOR MANAGEMENT FORUMS

**Section 1:** Pursuant to Executive Order 13522, the parties will establish a cooperative and productive, non-adversarial forum by which managers, employees and union representatives can discuss Agency operations. The forum will consider workplace challenges and discuss possible solutions jointly rather than advising the union on pre-determined solutions to problems.

**Section 2:** The forum will provide pre-decisional recommendations to the Staff Director or his or her designed management official regarding issues within its purview. Forum meetings are not collective bargaining sessions as defined by 5 U.S.C. § 7103(a)(12), and therefore, any final decision made by the Staff Director regarding an issue discussed at a forum may still be subject to notification to and bargaining with the Union in accordance with 5 U.S.C. 7114.

**Section 3:** Forum meetings will be held during duty-time and generally within the first (1st) month of each quarter of the Fiscal Year, to the extent permitted by both parties' schedules, for a total of no less than four (4) meetings per Fiscal Year.

**Section 4:** In order to ensure a productive and useful meeting, prior to each meeting, both parties agree to:

- A. identify a specific date, time, and place for the meeting;
- B. develop a written agenda, if any; and
- C. the Employer will respond to any Union request for data pertinent to the scheduled quarterly meeting in accordance with 5 U.S.C. § 7114(b)(4).

**Section 5:** The parties' certified joint implementation plan and any charter created by the forum committee shall govern all other practices and procedures for the forum.

# APPENDIX



RATING OFFICIAL'S DOCUMENTATION (Explanation for the assignment of a numerical score other than "3" must be given for each applicable element).

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RATING OFFICIAL'S RECOMMENDATION, IF APPLICABLE (Attach Justification)

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EMPLOYEE'S COMMENTS:

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Employee's Signature: \_\_\_\_\_ Date Received: \_\_\_\_\_

Supervisor's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Reviewing Official: \_\_\_\_\_ Date: \_\_\_\_\_

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#### GENERAL INSTRUCTIONS

1. Supervisors must complete this form in accordance with the terms of the negotiated agreement, particularly Article 12, Performance Appraisal System, for each unit employee.
2. Supervisors will evaluate the employee's performance in each performance requirement element on the aspects of quality and quantity. The supervisor will then assign a score (1-5) to the employee for his/her total performance on quality and quantity, considering each element.
3. Where this score is other than "3", the supervisor will document the specific reasons/ performance behaviors supporting this conclusion for each element. This will be done on this form, but continuation sheets may be attached, when necessary.
4. Ratings must be reviewed and approved by the next level of supervision prior to being issued.

APPENDIX II  
INDIVIDUAL DEVELOPMENT PLAN

This Individual Development Plan has been prepared in accordance with Article 19 of the Labor-Management Agreement between the Federal Election Commission and the National Treasury Employee's Union, Chapter 204.

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EMPLOYEE'S NAME \_\_\_\_\_ EMPLOYEE'S GRADE/SERIES \_\_\_\_\_

SUPERVISOR'S NAME \_\_\_\_\_ DIVISION/WORK LOCATION \_\_\_\_\_

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STATEMENT OF GOALS

During next appraisal period:

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TASKS AND ASSIGNMENTS DESIRED TO ACCOMPLISH GOALS

During next appraisal period:

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TRAINING DESIRED TO ACCOMPLISH GOALS (Indicate whether remedial, preparatory, long range, on-the-job or out-of-service)

During next appraisal period:

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Signature of Employee \_\_\_\_\_

\_\_\_\_\_ Date

ADDITIONAL SHEETS MAY BE ADDED IF NECESSARY.

**APPENDIX III  
TO  
ARTICLE 22 - HOURS OF WORK**

If a holiday falls on a		Then the employee is
1	core workday (scheduled workday) for a maxiflex employee;	relieved from duty and is entitled to 8 hours of pay at the employee's current rate of basic pay.
2	day the employee is scheduled to work 10 hours;	relieved from duty for 8 hours and will receive 8 hours of pay and either:  a. work two non-holiday hours on the holiday; or  b. arrange to work two additional hours on another work day in that biweekly pay period; or  c. request to use two hours of annual leave or credit hours already earned.
3	day the employee is scheduled to work 6 hours	relieved from duty and will receive 8 hours of basic pay which will be credited toward their 80-hour basic work requirement for the pay period. The employee may then work 2 fewer hours during the pay period in which the holiday occurs.
4	day the employee is not scheduled to work (a non-core day)	relieved from duty either the preceding or the succeeding scheduled work day. This day is designated as the "in lieu of" holiday. The employee will receive basic pay for the "in lieu of" holiday for the scheduled amount of hours they would have worked (not to exceed 8 hours)  a. If the holiday falls on a Sunday nonwork day, the "in lieu of" holiday is the next scheduled work day.  b. If the holiday falls on a nonwork day other than Sunday, the "in lieu of" holiday is the immediately preceding scheduled workday.

**APPENDIX IV  
TO  
ARTICLE 27 LEAVE  
FEDERAL EMPLOYEE ENTITLEMENTS  
under the  
FAMILY AND MEDICAL LEAVE ACT OF 1993  
(effective August 5, 1993)**

**ENTITLEMENT**

Sections 6381 through 6387 of title 5, United States Code, as added by Title II of the Family and Medical Leave Act 1993 (FMLA) (Public Law 103-3, February 5, 1993), provides covered Federal employees with entitlement to 12 workweeks of unpaid leave during any 12-month period for the following purposes:

- the birth of a son or daughter of the employee and the care of such son or daughter;
- the placement of a son or daughter with the employee for adoption or foster care;
- the care of spouse, son, daughter, or parent of the employee who has a serious health condition; or
- serious health condition of the employee that makes the employee unable to perform the essential functions of his or her positions.

To qualify for FMLA leave, you must have completed at least 12 months of Federal service (it does not have to be consecutive). Under certain conditions, FMLA leave may be taken intermittently, or the employee may work under a work schedule that is reduced by the number of hours of leave taken as family and medical leave. An employee may elect to substitute annual leave and/or sick leave, consistent with current laws and regulations, for any unpaid leave under the FMLA. FMLA leave is in addition to other paid time off available to an employee.

**JOB BENEFITS AND PROTECTION**

- Upon return from FMLA leave, an employee must be returned to the same position or to an "equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment."
- An employee who takes FMLA leave is entitled to maintain health benefits coverage. An employee may pay the employee share of the premiums on a current basis or pay upon return to work.

**ADVANCE NOTICE AND MEDICAL CERTIFICATION**

- The employee must provide notice of his or her intent to take family and medical leave not less than 30 calendar days before leave is to begin or as soon as is practicable.
- An agency may request medical certification for FMLA leave taken to care for an employee's spouse, son, daughter, or parent who has a serious health condition or for the serious health condition of the employee.

This is a brief summary of your entitlements and responsibilities under the FMLA. Please contact the FEC Office of Human Resources for additional information.

## Family Leave Programs

### Family & Medical Leave (FMLA)

### Adoption

#### Summary of 5 CFR 630 Subpart L

<b>Description</b>	<p>Permits employees to use:</p> <ul style="list-style-type: none"> <li>- 12 workweeks (480 hours for full-time employees) of unpaid leave (LWOP) during any 12-month period to take care of specified family and medical needs.</li> <li>- these 12 work weeks do not include holidays &amp; non-work days.</li> </ul> <p>Part-time employees are eligible for a pro-rated amount of FMLA leave. For part-time employees, the amount of FMLA leave granted may not exceed an amount equal to 12 times the average number of hours in his or her scheduled tour of duty each week (e.g., an employee who works 20 hours a week may not be granted more than a maximum of 240 hours, 20/hr week x 12 = 240 total)</p>	<p>May use up to 12 weeks of FMLA LWOP for placement of a child with the employee for adoption or foster care.</p> <p>May use annual leave to care for or bond with child or for other childcare responsibilities.</p> <p>May also use sick leave for purposes relating to adoption of a child.</p>
<b>Who is Eligible?</b>	<p>Any employee covered by the Federal Leave system who has completed 12 consecutive or nonconsecutive months of Federal service. Excluded are employees serving under temporary appointments with a time limitation of 1 year or less and intermittent employees.</p>	<p>All Federal employees subject to the Federal Leave system.</p>
<b>Reason for Use</b>	<p>Enables employees to use LWOP for:</p> <ul style="list-style-type: none"> <li>(1) the birth of a child and care of the newborn;</li> <li>(2) the placement of a child with the employee for adoption or foster care;</li> <li>(3) the care of a spouse, child, or parent with a serious health condition;</li> <li>(4) a serious health condition of the employee</li> </ul>	

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that makes him/her unable to perform the essential duties of his/her position.

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**Definitions**

**Family Member:**

**Spouse:** an individual who is a husband or wife pursuant to a marriage that is a legal union between one man and one woman, including common law marriage between one man and one woman in States where it is recognized.

**Son/Daughter:** a biological, adopted or foster child; a step child; a legal ward; or a child of a person standing *in loco parentis* who is under 18 years of age or 18 years or older and incapable of self-care because of mental or physical disability.

**Parent:** the biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a child. It does not include "parents in law" unless the parent-in-law stands *in loco parentis*.

***In Loco Parentis:*** individual who has day to day responsibility for the care and financial support of a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

**Serious Health Condition:** An illness, injury, impairment, or physical or mental condition that involves –

(1) **Inpatient Care:** An overnight stay in a hospital, hospice, or other residential medical care facility, including any period of incapacity or subsequent treatment in connection with

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such inpatient care; or

(2) **Absence Plus Treatment:** A period of incapacity of **more than 3 consecutive calendar days** (including any subsequent treatment or period of incapacity relating to the same condition), **that also involves:**

a) **Treatment 2 or more times** by a health care provider; or

b) **Treatment** by a health care provider **on at least 1 occasion** which results in a **regimen of continuing treatment** (e.g., a course of prescription medication or therapy) under the supervision of the health care provider; or

(3) **Pregnancy:** Any period of incapacity due to pregnancy, childbirth, or for prenatal care; or

(4) **Incapacity Due to Chronic Conditions:** Any period of incapacity or treatment for such incapacity that results in periodic visits for treatment by a health care provider, continues over an extended period of time (including recurring episodes of a single underlying condition), and may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.); or

(5) **Permanent/Long-term Conditions Requiring Supervision:** A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but not need to be receiving active treatment by, a health care provider (e.g., Alzheimer's, a severe stroke, or the terminal stages of a disease); or

(6) **Multiple Treatment:** Any period of

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absence to receive multiple treatments (including any period of recovery stemming from treatment) by a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than 3 consecutive calendar days in the absence of medical intervention or treatment, (e.g., chemotherapy/radiation for cancer, physical therapy for severe arthritis, and dialysis for kidney disease).

**Exclusions:** A serious health condition does NOT include:

- (1) Routine physical examinations, eye examinations, or dental examinations;
  - (2) Continuous treatment that includes the taking of over-the-counter medications, (e.g., aspirin, antihistamines, or salves); or bed-rest, exercise, and other similar activities that can be initiated without a visit to the health care provider;
  - (3) A condition for which cosmetic treatments are administered, unless inpatient hospital care is required or unless complications develop;
  - (4) An absence because of an employee's use of an illegal substance, unless the employee is receiving treatment for substance abuse by a health care provider;
  - (5) The common cold, flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, or periodontal disease, unless complications arise;
  - (6) Allergies, restorative dental or plastic surgery after an injury, removal of cancerous growth, or mental illness resulting from stress, unless such conditions require inpatient care or continuing treatment by a health care provider.
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<b>Requirements for FMLA Leave</b>	<p>(1) FMLA leave must be invoked by the employee, either written, oral, or electronic;</p>	<p>Adoption or foster care placement-related leave must be requested in a written, oral, or electronic format, and within required time limits.</p>
	<p>(2) Where the need for leave is foreseeable, the employee must give advance notice of leave at least 30 calendar days before the leave period, or if need for leave is not foreseeable, within a reasonable period of time appropriate to the circumstances involved; and</p>	
	<p>(3) Medical certification must be submitted within 15 calendar days of supervisor's request. If it is not practicable under the circumstances to provide the requested medical certification within 15 calendar days, despite the employee's diligent and good faith efforts, the employee must submit medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date requested. If the medical certification is not submitted within the specified time period, the employee may be charged AWOL or the agency may allow the employee to request that the leave be charged as LWOP or as a type of paid leave (sick, annual).</p>	
	<p>(4) In the case of intermittent leave for planned medical treatment, the medical certification must include: (a) the dates (actual or estimates) on which such treatment is expected to be given; (b) the duration of such treatment, and the period of recovery, if any, or specify that the serious health condition is a chronic or continuing condition with an unknown duration and; (c) whether the employee is presently incapacitated and the likely duration and frequency of episodes of incapacity.</p>	
<b>Procedures for Applying</b>	<p>Employees must apply for FMLA medical leave no less than 30 days before leave is to begin if the need for leave is foreseeable; or</p>	<p>Employees must apply for leave related to adoption or foster care placement no less</p>

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within a reasonable period of time appropriate to the circumstances involved, if the need for leave is not foreseeable. Employees may be asked to provide medical certification.

than 30 days before leave is to begin if the need for leave is foreseeable; or within a reasonable period of time appropriate to the circumstances involved, if the need for leave is not foreseeable.

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**Who Approves the Leave?**

Immediate supervisor, or next level supervisor in the immediate supervisor's absence.

Immediate supervisor, or next level supervisor in the immediate supervisor's absence.

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**APPENDIX V**  
**TO**  
**ARTICLE 41 PROHIBITED PERSONNEL PRACTICES**  
**TITLE 5 GOVERNMENT ORGANIZATION AND EMPLOYEES**

PART III. EMPLOYEES

SUBPART A. GENERAL PROVISIONS

CHAPTER 23. MERIT SYSTEM PRINCIPLES

5 USCS § 2302

§ 2302. Prohibited personnel practices

**(a)**

**(1)** For the purpose of this title, “prohibited personnel practice” means any action described in subsection (b).

**(2)** For the purpose of this section—

**(A)** “personnel action” means—

**(i)** an appointment;

**(ii)** a promotion;

**(iii)** an action under chapter 75 of this title or other disciplinary or corrective action;

**(iv)** a detail, transfer, or reassignment;

**(v)** a reinstatement;

**(vi)** a restoration;

**(vii)** a reemployment;

**(viii)** a performance evaluation under chapter 43 of this title;

**(ix)** a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph;

**(x)** a decision to order psychiatric testing or examination; and

**(xi)** any other significant change in duties, responsibilities, or working conditions;

with respect to an employee in, or applicant for, a covered position in an agency, and in the case of an alleged prohibited personnel practice described in subsection (b)(8), an employee or applicant for employment in a Government corporation as defined in section 9101 of title 31;

**(B)** “covered position” means, with respect to any personnel action, any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include any position which is, prior to the personnel action—

**(i)** excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

**(ii)** excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration; and

**(C)** “agency” means an Executive agency and the Government Printing Office, but does not include—

**(i)** a Government corporation, except in the case of an alleged prohibited personnel practice described under subsection (b)(8);

**(ii)** the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or

**(iii)** the Government Accountability Office.

**(b)** Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

**(1)** discriminate for or against any employee or applicant for employment—

**(A)** on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16);

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

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

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

**(E)** on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;

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

**(A)** an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

**(B)** an evaluation of the character, loyalty, or suitability of such individual;

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

**(4)** deceive or willfully obstruct any person with respect to such person's right to compete for employment;

**(5)** influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

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

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

**(8)** take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of—

**(A)** any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—

**(i)** a violation of any law, rule, or regulation, or

**(ii)** gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

**(B)** any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—

**(i)** a violation of any law, rule, or regulation, or

**(ii)** gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

**(9)** take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of—

**(A)** the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;

**(B)** testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A);

**(C)** cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

**(D)** for <sup>[1]</sup> refusing to obey an order that would require the individual to violate a law;

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

**(11)**

**(A)** knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or

**(B)** knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement; or

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

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

**(c)** The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management, and for ensuring (in consultation with the Office of Special Counsel) that agency employees are informed of the rights and remedies available to them under this chapter and chapter 12 of this title. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation.

**(d)** This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

**(1)** section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

**(2)** sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

**(3)** under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 (d)), prohibiting discrimination on the basis of sex;

**(4)** section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or

**(5)** the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

**(e)**

**(1)** For the purpose of this section, the term “veterans’ preference requirement” means any of the following provisions of law:

**(A)** Sections 2108, 3305 (b), 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317 (b), 3318, 3320, 3351, 3352, 3363, 3501, 3502 (b), 3504, and 4303 (e) and (with respect to a preference eligible referred to in section 7511 (a)(1)(B)) subchapter II of chapter 75 and section 7701.

**(B)** Sections 943 (c)(2) and 1784 (c) of title 10.

**(C)** Section 1308(b) of the Alaska National Interest Lands Conservation Act.

**(D)** Section 301(c) of the Foreign Service Act of 1980.

**(E)** Sections 106 (f), <sup>[2]</sup> 7281 (e), and 7802 (5) <sup>[2]</sup> of title 38.

**(F)** Section 1005 (a) of title 39.

**(G)** Any other provision of law that the Director of the Office of Personnel Management designates in regulations as being a veterans’ preference requirement for the purposes of this subsection.

**(H)** Any regulation prescribed under subsection (b) or (c) of section 1302 and any other regulation that implements a provision of law referred to in any of the preceding subparagraphs.

**(2)** Notwithstanding any other provision of this title, no authority to order corrective action shall be available in connection with a prohibited personnel practice described in subsection (b)(11). Nothing in this paragraph shall be considered to affect any authority under section 1215 (relating to disciplinary action).

**APPENDIX VI  
TO  
ARTICLE 47 OFFICIAL GRIEVANCE FORM**

**NTEU/FEC  
OFFICIAL GRIEVANCE FORM**

**Filed by**

- Union
- Management
- Self

**1. Date Filed**

Step #1: \_\_\_\_\_  
Step #2: \_\_\_\_\_  
Step #3: \_\_\_\_\_

**Initials**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**2. Grievants:**

**3. Position and Organization:**

**4. Immediate Supervisor:**

**5. Employee's Representative:**

- Self
- Union (Complete 5a & 5b)

**5a. Name of Union Representative:**

**5b. Representatives Work Tel. #:**  
694-

**6. Specific Article(s) and Section(s) of the NTEU/FEC Labor Management Agreement Allegedly Violated; Sections of Applicable Law or Regulation Allegedly Violated; or the Specific Nature of the Employment Condition in Dispute:**

**7. Statement of the Circumstances Giving Rise to the Grievance (Provide nature of the incident, persons involved, time, date, place, etc.):**

NTEU/FEC Grievance Form

8. Discrimination:

8a. Is discrimination being alleged and grieved?  Yes  No

8b. If yes, state the name of the allegedly discriminatory official(s):

9. Remedy Requested:

Grievant's (or Representative's) Signature: \_\_\_\_\_