

**AGREEMENT BETWEEN THE
GENERAL COUNSEL OF THE
NATIONAL LABOR RELATIONS BOARD
AND THE
NLRB UNION**

EXPIRATION DATE: DECEMBER 6, 2016

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PREAMBLE

Pursuant to applicable law and government-wide rule and regulation, this Agreement and any National Supplemental Agreements as may be executed hereunder from time to time together constitute a collective-bargaining agreement by and between the General Counsel of the National Labor Relations Board, hereinafter called the Agency, and the National Labor Relations Board Union, hereinafter called the NLRBU.

ARTICLE 1
PRINCIPLES, POLICIES AND PURPOSES

The Agency and the NLRBU agree, in accordance with applicable law and government-wide rule and regulation, that:

1. 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 involving conditions of employment.

2. The public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

3. It is the intent and purpose of the parties to promote and improve efficient administration of the National Labor Relations Act and the well-being of the employees in the unit described in Article 2, by establishing a mutual understanding relative to personnel policies, procedures, and practices affecting the terms and conditions of employment of such employees.

4. Effective labor-management relations requires a clear statement of the respective rights and obligations of the parties hereto, as set forth in the Agreement which follows.

ARTICLE 2
EXCLUSIVE RECOGNITION

In recognition of the fact that a majority of the employees in the unit described below has selected the NLRBU as exclusive bargaining representative and that a certification has issued to this effect, the Agency hereby reaffirms its recognition of the NLRBU as the exclusive bargaining representative of employees in the following unit:

All nonprofessional employees of the Office of the General Counsel (OGC) of the National Labor Relations Board; and all professional employees of the OGC in the Regional, Sub-regional and Resident Offices; excluding all employees of the National Labor Relations Board, all other professional employees, management officials, supervisors and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6) and (7).

Except as specifically noted, the term employee in this Agreement shall refer exclusively to bargaining unit employees as defined in this Article.

ARTICLE 3
PRECEDENCE OF LAW AND REGULATION AND
MANAGEMENT RIGHTS AND OBLIGATIONS

Section 1. In the administration of all matters covered by this Agreement, officials and employees are governed by existing and future law; government-wide rule and regulation prescribed on or before the effective date of this Agreement; future government-wide rule and regulation implementing future law; future rule and regulation implementing 5 U.S.C. § 2302; government-wide rule and regulation, applicable to, and existing at the time of, any future modifications to this Agreement; and any other future rule or regulation to the extent required by law.

Section 2. (a) Subject to Subsection (b) of this Section, management officials of the Agency retain the right –

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and

(2) in accordance with applicable laws –

(A) to hire, assign, direct, layoff, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;

(C) with respect to filling positions, to make selections for appointments from –

(i) among properly ranked and certified candidates for promotion; or

(ii) any other appropriate source; and

(D) to take whatever actions may be necessary to carry out the Agency mission during emergencies.

(b) Nothing in this Section shall preclude the Agency and the NLRBU from negotiating--

(1) except as otherwise provided in this Agreement, at the election of the Agency on the numbers, types, and grades of employees or

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positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the Agency will observe in exercising any authority under this Section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this Section by such management officials.

The foregoing shall have the identical meaning as Section 7106 of 5 U.S.C. Chapter 71 as interpreted by the FLRA and the courts.¹

Section 3. (a) It is the intent of the parties hereto that there is no conflict between the terms of this Agreement and the NLRB Administrative Policies and Procedures Manual or other Agency policies, procedures, rules or regulations affecting conditions of employment, including local office policies and procedures. If such conflict is found to exist, this collective-bargaining agreement shall take precedence, to the extent permitted by law.

(b) (1) The substance of any existing policy, procedure, rule or regulation shall not be subject to the grievance procedure. Subject to its obligation to negotiate with the NLRBU as required by law and this Agreement, management shall have the right to establish new policies and procedures as well as make new rules and regulations with regard to conditions of employment; and the substance of any such policy, procedure, rule or regulation shall not be subject to the grievance procedure. However, any claimed violation, misinterpretation, or misapplication of any policy, procedure, rule or regulation affecting conditions of employment shall be subject to the grievance procedure.

(2) Upon request of the Agency or the NLRBU, the parties will negotiate to the extent required by law over the substance of any policy, procedure, rule or regulation affecting conditions of employment and all agreements reached will constitute a National Supplemental Agreement under Article 26 of this Agreement.

¹ Notice to the Union required by law or this Agreement will be sent to all members of the NLRBU Executive Committee.

(3) Local policies and procedures negotiated by the Regional Director and the appropriate local union shall not acquire the status of a Local Supplemental Agreement under Article 26 of this Agreement, unless the local parties mutually agree to submit a Local Supplemental Agreement for approval under Article 26.

Section 4. The Agency will furnish all information required by the collective-bargaining agreement to the NLRBU electronically² except for dues reports, which will be furnished in hard copy to the NLRBU Treasurer and designated NLRBU Membership Committee Co-Chair.

Section 5. The Agency will furnish the NLRBU Executive Committee an electronic copy of the monthly report that shows all accessions, separations, transfers, reassignments, and promotions for all Agency employees.

Section 6. The Agency will furnish the NLRBU Executive Committee on an annual basis an electronic list of employees in the unit that includes name, position title, grade, GS series, organizational description,³ step, Agency entry-on-duty (EOD) date, and date of last promotion. The list will be provided in Excel format. The cutoff date for preparing this list is the end of the first full pay period in January of each year. The list will be delivered to the NLRBU within 15 working days after the cutoff date.

Section 7. (a) Upon request, the Agency will furnish the NLRBU, to the extent not prohibited by law, data:

- (1) Which is normally maintained by the Agency in the regular course of business;
- (2) Which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and
- (3) Which does not constitute guidance, advice, counsel, or

² This will not be constructed as a waiver of the Union's right to hard copies for such purposes as litigation.

³ The term "organizational description" means Division, Branch, Section, Unit, Region, Sub-Region or Resident Office, as applicable.

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training provided for management officials or supervisors, relating to collective bargaining.

(b). In addition, the General Counsel will, upon request, furnish the NLRBU with the citation to any specific pertinent statute, rule, regulation, policy directive, or Executive Order which meets the criteria in Subsection (a) above.

Section 8. (a) The Agency will post the following documents on its Intranet site: All General Counsel Memoranda; all Operations-Management (OM) Memoranda; all Administrative Bulletins (ABs); Administrative Policy Circulars (APCs); the promotion, resident agent, and transfer registers; and the no-cost transfer list.

(b) The Agency will provide NLRBU Executive Committee with all writings issued from Headquarters which pertain to general conditions of employment of employees distributed to all or groups of employees.⁴ In addition, these documents will be distributed to the applicable NLRBU District Vice President and the local union for those offices where the Office Head or Regional Director, or employees, receive the material.

Section 9. (a) In the event that budgetary considerations seriously impair the Agency's ability to effectively achieve the mission and goals of the National Labor Relations Act, the Agency will not be obligated to implement or continue a benefit of this Agreement which is expressly contingent on such considerations. Except in dire circumstances, the Agency will notify the NLRBU in advance of any decision to limit or discontinue such benefits so as to provide a reasonable opportunity, under all the circumstances, for meaningful consultations regarding the decision. Further, the Agency will bargain, to the extent required by law, over the effects of such decision, including restoration. In the event the parties undertake bargaining pursuant to this section, the NLRBU will not utilize Article 15 (Grievance Procedure) or Article 16 (Arbitration) on such matters.

(b). In the event of a Continuing Resolution (CR), if the Agency determines to defer benefits which are expressly contingent on budgetary considerations, the Agency will consult with the NLRBU regarding those

⁴ It is understood that management is not obligated to provide the Union representatives with writings that are confidential or constitute guidance, advice, counsel, or management training, relating to collective bargaining.

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contractual benefits that need to be deferred. The NLRBU will not grieve the deferral of such benefits when such deferral is based on the fact that the funds from the CR are insufficient to cover all of the Agency's obligations. Within 30 calendar days following enactment of either the Agency's annual appropriation or a final continuing resolution, or upon approval of the Agency Operating Plan, whichever occurs first, absent a determination by the Agency that such deferred benefits will be curtailed under the above "seriously impaired" standard, the deferred benefits will be retroactively restored to the greatest extent possible, consistent with law.⁵

⁵ If the Transit Subsidy Program (Article 39) is deferred pursuant to this paragraph, retroactive payments to employees will be made, to the extent permitted by law, upon submission of an SF-1164, which includes the employee's signed certification that the amount claimed is for expenses incurred for purposes of commuting to and from work using qualified mass transportation. In addition, supporting documentation (receipts) must accompany the SF-1164 and employee certification. If it is determined that cash or EFT payments are inconsistent with law, rule, or government-wide regulation, the parties will explore alternative ways of reimbursing employees for deferred transit subsidies.

ARTICLE 4
RIGHTS AND OBLIGATIONS OF EMPLOYEES

Section 1. Consistent with the merit system principles set forth in 5 U.S.C. § 2301(b), employees should:

(a) Receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or disabling condition, and with a proper regard for their privacy and constitutional rights;

(b) Maintain high standards of integrity, conduct, and concern for the public interest;

(c) Be retained on the basis of the adequacy of their performance; inadequate performance should be corrected; and

(d) Be separated if they cannot or will not improve their performance to meet required standards.

Section 2. (a) Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under 5 U.S.C. Chapter 71, such right includes the right—

(1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under 5 U.S.C. Chapter 71. Managerial and supervisory employees excluded from the bargaining unit by Article 2 cannot hold office in or act for the NLRBU in the capacity of representative.

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(b) In addition, each employee shall have the right to engage in other concerted activities for the purpose of mutual aid or protection.⁶

Section 3. The NLRBU agrees that employees covered by this Agreement will not engage in a strike, work stoppage, or slowdown.

Section 4. Nothing in this Agreement shall require an employee to become a member of or to remain a member of the NLRBU, or to pay money to the NLRBU, except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions.

Section 5. (a) In accordance with applicable law and government-wide rule and regulation, the Agency agrees there will be no discrimination in the selection, reclassification, promotion, transfer, or reassignment of employees or in other terms and conditions of employment because of lawful political affiliation and belief, marital status, race, color, creed, national origin, religion, disabling condition, age, sex, sexual orientation, membership in or activity on behalf of the NLRBU or lack of membership or activities on behalf of the NLRBU, other concerted activities as defined herein, or any other non-job related criteria.

(b) Consistent with applicable law and government-wide rule and regulation, the Agency agrees, consistent with Article 24, Section 2(b), to provide a workplace free from all forms of harassment, including sexual harassment.

Section 6. The Agency agrees that no employee shall be denied leave as set forth in Article 14 (Leave) or Article 21 (Hours of Work), or disciplined⁷ in a manner other than as set forth in Article 18 (Adverse Actions) except for just cause.

Section 7. Employees will not be subject to arbitrary or unreasonable acts by a management official or supervisor which would otherwise be grievable under Article 15 (Grievance Procedure), Section 2. No action will be taken

⁶ For the purpose of this Agreement, "concerted activities" shall have the identical meaning as protected concerted activities under the National Labor Relations Act, except where such activities are prohibited by law, applicable government-wide rule or regulation or this Agreement.

⁷ The parties agree that written reprimands are discipline within the meaning of this section. The parties further agree that warnings, counseling's, and equivalent actions, whether written or oral, are not discipline.

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against an employee for violating a policy, procedure, rule or regulation which he or she did not know or reasonably could not have known existed. Transmittal of a document (or a link to a document) to an employee's Agency e-mail account is considered receipt by the employee for purposes of notification and accountability.

Section 8. Employees shall have the right to informally bring matters of personal concern to the attention of appropriate officials of the Office of the General Counsel or of the Board, and, upon request; the employee may be represented in these matters by the NLRBU. However, if the matter involves a subject who would appropriately be communicated to or through Office Heads or other Office management, the employee should first bring the matter to the attention of the Office Head or other Office management for appropriate action.

Section 9. During the normal duty hours of the office, employees are entitled to, and management shall, consistent with its obligation to negotiate as required by law, take reasonable steps to provide, in accordance with Article 23 (Health and Safety) and applicable Agency and Government policy and guidelines, safe and healthful working conditions, including reasonable temperature and humidity levels, appropriate physical surroundings, and reasonable space and equipment necessary to carry out official responsibilities in an atmosphere conducive to work.

Section 10. This Agreement shall not be construed or applied so as to in any manner impair or diminish any rights, privileges, or benefits which are otherwise available to any employee.

Section 11. (a) Employees shall have the right to NLRBU representation at any examination by a representative of the Agency in connection with an investigation if-

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

The foregoing shall have the identical meaning as 5 U.S.C. § 7114(a)(2)(B).

(b) An employee is entitled to notice of the subject matter of the examination and is entitled to a consultation period, of up to 30 minutes, with a NLRBU representative prior to such examination.

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(c) When notifying an employee of any examination which a supervisor reasonably believes may result in disciplinary action against the employee, the supervisor will offer the employee the opportunity to secure Union representation.

(d) The employee may designate a particular NLRBU representative for purposes of this Section, provided such designation does not unreasonably delay the interview.

Section 12. Employees who are witnesses in an administrative investigation will be advised in writing of the circumstances in which any statement given by the employee may be disclosed. Such employees will be advised of the following:

You are being contacted to solicit your cooperation in an administrative investigation regarding alleged misconduct. Agency employees are required to cooperate fully and to provide truthful responses to questions asked by the Agency investigator. See 29 CFR § 100.201. Each federal employee has the right to review the materials relied upon in proposing and effectuating discipline as to him or her. See U.S.C. §7513(e); 5 CFR §752.404(b)(1) and Article 18, §5(b)(1) and 7(b)(1) of the Agreement between the Agency and the NLRBU. Accordingly, should you be asked to provide a statement, such statement may be provided to the employee found to have engaged in misconduct warranting discipline.

Further, the following statement will be incorporated into the affidavit or interview of employees contacted during the investigation:

I understand that my statement is not confidential and may be provided to employees found to have engaged in misconduct and to other Agency officials or managers on a need to know basis only. I understand that my statement will become part of the Agency Report of Investigation, which may be provided to the employee who is the subject of the investigation.

Section 13. The Agency will not take or fail to take a personnel action with respect to any employee as a reprisal for a disclosure of information by an employee which the employee reasonably believes evidences –

- (a) a violation of any law, rule, or regulation, or
- (b) mismanagement, a gross waste of funds, an abuse of authority, or a

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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.

Section 14. (a) Employees will be afforded a three day period to consider initial agency drafts of last chance agreements and to consider initial agency proposals for resolutions of disciplinary actions.

(b) The agency will provide a written statement to employees that they have a right to consult with union representatives when they are informed they are being disciplined, and in cases of proposed last chance agreements and other agency-employee resolutions of disciplinary actions.

ARTICLE 5
RIGHTS AND OBLIGATIONS OF THE NLRBU

Section 1. The Agency recognizes the NLRBU as the exclusive representative of all employees in the unit described in Article 2 of this Agreement. The NLRBU shall have all such rights and be subject to all such limitations as provided by law and is entitled to act for and to negotiate agreements covering all employees in the unit. It is responsible for representing the interest of all employees in the unit without discrimination, without regard to sexual orientation, and without regard to labor organization membership.

Section 2. The NLRBU agrees it will not represent other individuals for whom provisions of the National Labor Relations Act apply or affiliate directly or indirectly with an organization, which represents other individuals to which provisions of the National Labor Relations Act apply.

Section 3. The NLRBU agrees, its officers or agents will not:

(a) Call or participate in a strike, work stoppage, or slowdown, or picket the Agency in a labor-management dispute if such picketing interferes with the Agency's operations; or

(b) Condone any activity described in (a) above by failing to take action to prevent or stop such activity.

Nothing contained in Section 3 shall result in any informational picketing, which does not interfere with the Agency's operations being considered as violative of this Agreement.

The foregoing shall have the identical meaning as 5 U.S.C. § 7116(b) as interpreted by the FLRA and the courts.

Section 4. The NLRBU agrees it will not solicit dues, membership, or carry on any internal business during working time.

Section 5. The NLRBU shall supply, in writing, a complete list of all national officers and other designated representatives, including authorized representatives of its local unions, to the Assistant General Counsel for Labor & Employee Relations. The NLRBU will provide the list on or about January 1, April 1, July 1 and October 1 of each year.

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Section 6. [GC: CBA] The General Counsel and his or her agents, Regional Directors, Officers-in-Charge, and, when appropriate, Resident Officers shall recognize authorized representatives of the NLRBU. [Board: CBA] The Board and their agents shall recognize authorized representatives of the NLRBU. Upon submission of the names of authorized representatives, the above-named officials shall consult with and, when appropriate, negotiate with the authorized representatives of the NLRBU. Any such consultations and/or negotiations shall be consistent with the provisions of this Agreement.

Section 7. (a) Except as limited elsewhere in this Agreement, it is agreed that all matters affecting conditions of employment of employees are appropriate subjects for consultation and, where required by applicable law, negotiations between the parties hereto, including but not limited to labor-management cooperation, employee and career development, promotion plans, position classification programs, and methods of adjusting grievances.

(b) To the extent required by law and this Agreement, the NLRBU shall be given notice and an opportunity to bargain over changes in matters affecting conditions of employment of employees, including policies and procedures.

Section 8. The NLRBU shall be given the opportunity to be represented at:

(a) Any formal discussion between one or more representatives of the Agency and one or more employees or their representatives concerning any grievance or any personnel policy or practices or other general conditions of employment;

(b) Any examination of an employee by a representative of the Agency in connection with an investigation if--

(1) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

(2) the employee requests representation.

ARTICLE 6
ORIENTATION, TRAINING, CAREER
DEVELOPMENT AND BRIDGE PROGRAM

Section 1. Orientation. The Agency will maintain an orientation training program designed to provide each employee with an understanding of the organization and mission of the Agency, and his or her function. The Office Head is responsible for ensuring the orientation of new employees in the office. Such orientation will be provided to the employee normally within the first week of his or her employment.

Section 2. Training. The Agency will maintain a training program designed to improve and update the skills of employees and provide for regular career development and promotional opportunities for employees.⁸ The Office Head is responsible for ensuring that there is training and regular development of career planning and promotional opportunities for employees in the office.

Section 3. Applicable to Field Employees Only (a) Consistent with the demonstrated ability of an employee to handle work as assigned, each employee will be provided an adequate opportunity for development and progress through proper assignment of a variety of case work consistent with operating needs.

(1) *Applicable to Professional Employees Only:* This opportunity is for the purpose of enabling an employee to demonstrate his or her ability to perform the work of his or her current position and grade, as well as that of the next higher grade of the career ladder in order to avoid employees being denied career ladder promotions, where the employee has not been provided such opportunity.

(2) *Applicable to Field Support Staff Employees Only:* This opportunity is for the purpose of enabling an employee to demonstrate his or her ability to perform the work of his or her current position and grade, as well as that of the next higher grade of the career ladder in order to avoid employees being denied career ladder promotions for lack of experience. However, the Regional Director may detail employees to any position for training purposes.

⁸ In addition, for Headquarters (including Division of Judges satellite employees) employees only, the training program will provide for upward mobility opportunities for employees.

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(b) Where an employee has failed to demonstrate his or her ability to handle more difficult, more complex, or less supervised case assignments, management will, consistent with the provisions of Article 9 (Performance Appraisal System), Section 4, review such employee's progress in other work and determine, at least annually, whether it is appropriate to provide additional opportunity to the employee to demonstrate his or her ability to handle more difficult, more complex, or less supervised case assignments.

Section 4. (a) *Applicable to Professional Employees Only:* Employees will not be denied consideration for Group Supervisor or Compliance Officer based on not having served in the position in an acting capacity, where the employee has not been provided such opportunity.

(b) *Applicable to Field Support Staff Employees Only:* Employees will not be denied a "Well-Qualified" rating for Secretary to the Regional Director or Assistant Office Manager based on not having served in the position in an acting capacity, where the employee has not been provided such opportunity.

Section 5. Factors to be considered in developing career planning and training for employees shall include:

- (a) Education;
- (b) Relevant experience;
- (c) Past and present job performance;
- (d) Relevant individual skills and characteristics; and
- (e) Estimation of individual potential.

These factors do not refer to the criteria for promotion.

Section 6. *Applicable to Attorneys Only:* For purposes of trial training, for attorneys below the full performance level, details may be provided to other Regional Offices in order to try cases under the supervision of that office.

Section 7. *Applicable to Professional Employees Only:* (a) Qualified employees should be given meaningful opportunities to serve in acting supervisory capacities consistent with the needs of the Region.

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(b) In Resident and Subregional Offices, qualified employees who are not provided meaningful opportunities to serve in acting supervisory capacities in their own offices, should be provided an opportunity to serve in an acting supervisory capacity in the Regional Office at least once during the term of this Agreement, consistent with budgetary considerations and operating needs. A temporary detail in the Regional Office for this purpose shall not be for less than 2 weeks.

Section 8. Applicable to Field Employees Only. An employee may request a conference with his or her supervisor or, if designated, other management official, for the purpose of obtaining training and career development counseling. Such requests will be granted and, consistent with operating needs, conferences will be scheduled at reasonable times and at reasonable intervals consistent with the employee's developmental needs.

Applicable to Field Employees Only. Consistent with Section 5 above, such counseling shall include a discussion of the employee's developmental needs and advice on training courses available in the area which he or she may pursue to assist his or her own development.

Section 9. Applicable to Field Support Staff Employees Only: (a) For the purposes of this Article, "training" is defined as on-the-job instruction in the work of a unit position by someone qualified in that position, and practice or experience in performing duties related to that position, for the purpose of:

- (1) preparing an employee to properly perform the duties of his or her current position;
- (2) preparing an employee to progress to the established full performance level of his or her current position;
- (3) preparing an employee to temporarily perform the duties of another position; and
- (4) assisting employees to demonstrate the ability to perform other support staff positions.

(b) Each employee, consistent with operating needs, will, upon request, be afforded a reasonable opportunity to observe and receive instructions in the performance of other unit positions within the office.

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Section 10. Applicable to Field Support Staff Employees Only: Each employee will, consistent with operating needs, be afforded a reasonable opportunity to observe a variety of casehandling assignments, including representation case hearings, pre-election conferences and elections, affidavit-taking, and "C" case trials, during regular work hours within the metropolitan area of the office to which the employee is assigned. Such opportunities will be publicized. In addition:

(a) Each employee will be made aware of opportunities to volunteer to participate in large elections, where needed, and to provide clerical assistance on large trials, as needed.

(b) Training will be provided to employees in the history and purposes of the Act.

(c) Employees will be notified of the availability of inter/intranet resources.

(d) Local parties may develop a schedule of voluntary 1-hour "brown bag" seminars to educate employees on various topics which are part of professional duties.

(e) Bridge Program material will be included in the support staff orientation package to ensure awareness of such program.

Section 11. Applicable to Headquarters (including Division of Judges satellite offices) Employees Only: Career Development. (a) General. (1) The Agency agrees that carefully selected employees may be considered for paraprofessional or professional positions in the Satellite Judges and Washington Headquarters offices and agrees to provide training for employees for that purpose where operating needs permit. The Agency agrees, through the development of improved career ladders, to continue to encourage opportunity for promotion and career development for qualified employees in the lower grades who have reached the full performance levels in their respective job classifications.

(2) Each employee will be provided a reasonable opportunity for development and progress within their career ladder through proper assignment of a variety of work essential to his or her development in keeping with the operating needs and time responsibilities of the Agency. Such opportunities may include detailing employees to appropriate positions for training purposes. It is understood that the

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aforementioned obligation on the part of Management is for the purpose of avoiding employees being denied career ladder promotions for lack of experience unless they have been provided the opportunity to perform such work.

(3) Where an employee has failed to demonstrate his or her ability to handle more difficult, more complex, or less supervised assignments, Management will, consistent with the provisions of Article 9 (Performance Appraisal System), Section 4, review such employee's progress in other work and determine, at least annually, whether it is appropriate to provide additional opportunity to the employee to demonstrate his or her ability to handle more difficult, more complex, or less supervised assignments.

(4) In accordance with Article 9 (Performance Appraisal System), Sections 18 and 19, employees will not be denied a well qualified rating (potential for competitive promotion) to positions within the organizational unit for which they meet the minimum qualification requirements solely for lack of experience.

(b) Career Development Review and Counseling. (1) In order to ensure that an employee serving a probationary period is fully apprised of his or her job performance, developmental needs and potential in the Agency, the employee's supervisor shall meet with the employee who has completed at least 6 months but no more than 8 months of his or her probationary period and, upon completion of the probationary period, to discuss these matters.

(2) Non-probationary employees. An employee may request a conference with his or her supervisor and/or the Human Resources Branch for the purpose of obtaining training and career development counseling. Any such requests will be granted, it being understood that it is the responsibility of the supervisor or the Human Resources Branch, as applicable, to schedule such conferences at reasonable times and at reasonable intervals consistent with the employee's development.

Such counseling shall include as appropriate: a review of the employee's performance on his or her job, to include the quantity and quality of work performed; a discussion of the employee's developmental needs, and advice on training courses available in the area which he or she may pursue to assist his or her own development; and his or her potential prospects within the Agency.

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(c) Upward Mobility. The Agency shall offer employees opportunities to improve their skills to prepare for possible promotion to paraprofessional and/or professional positions within the Agency. Accordingly, the Agency shall:

- (1) Provide on-the-job training opportunities in all phases of Agency operations, in a manner consistent with the operating needs of the office.
- (2) Provide financial assistance including tuition costs, fees, books, and reasonable travel expenses for education, to the extent funds are available.
- (3) Maintain, and to the extent required by law negotiate with the NLRBU, a program for training and development of employees for possible promotion to Field Examiner, Paralegal, Paralegal Specialist, and Computer Assistant positions (Bridge Program).
- (4) Provide counseling for those employees interested in moving into para-professional and/or professional positions.
- (5) Post information relevant to job performance and career development, training seminars, courses, programs, etc., received from a variety of training sources and disseminate information regarding the availability of other such material in the office and Outlook (or its successor) bulletin boards.

(d) Bridge Program. The Agency is committed to providing employees in support staff positions with career and upward mobility positions within the Agency. Subject to operating needs and budgetary and staffing considerations, current functions will be restructured to promote Agency efficiency and to create promotional opportunities which will enhance the skills and potential of our workforce. These opportunities will continue to be provided through a structured Bridge Program with a minimum of 1 posting per year for a total of at least 6 positions over the life of the contract. Bridge positions shall include certain bridge-type 1-grade interval positions such as Computer Assistants and Paralegals. Other positions will be announced as the Agency evaluates current operations.

The Bridge Program will involve intensive training and, as necessary, coursework for the target position. Training during the applicable period of time will be available during working hours and, as necessary, during other

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hours. Such training and necessary course work will be funded by the Agency consistent with the course provisions of Section 7 below.

Upon successful completion of his or her Bridge Program Training Plan, the employee will be converted to the target position.

Section 12. Applicable to Headquarters (including Division of Judges satellite offices) Employees only: Orientation. Orientation sessions will be provided for new employees. The NLRBU may designate one representative to attend these sessions and to introduce himself or herself as the NLRBU Representative of the employees.

On-the-Job Training. Management will continue to provide on-the-job training to improve job related skills. Management shall be responsible for providing reasonable on-the-job training to an employee who is temporarily assigned to a position other than the one to which he or she is permanently assigned.

Learning Laboratory. Employees will be provided a reasonable opportunity to utilize the Agency's learning laboratory to improve job related skills.
Government and Non-government Courses. Consistent with Section 9(a) of this Article, employees will be afforded reasonable opportunities to participate in Agency approved government or non-government sponsored training programs, which may include seminars, institutes, symposia and conferences, normally limited to the metropolitan area of the employee's duty station, relating to the skills necessary for the employee's current position.

Cross Training. Consistent with operating needs, the General Counsel will afford each employee a reasonable opportunity to observe and receive instructions in the performance of other positions within his or her organizational unit. Such training is for the purpose of giving instruction in the work of a unit position by someone qualified in that position, and practice or experience in performing duties related to that position, for the purposes of:

- (1) preparing an employee to properly perform the duties of his or her current position;
- (2) preparing an employee to progress to the established full performance level of his or her current position;

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- (3) preparing an employee to temporarily perform the duties of another position; and
- (4) assisting employees to demonstrate the ability to perform other support staff positions.

Section 13. *Applicable to Headquarters (including Division of Judges satellite offices) Employees Only:* Training Information. Information on training and educational opportunities available through either government agencies and educational institutions will be maintained and made accessible by the Personnel Branch. The NLRBU and employees will be furnished information concerning training and educational opportunities by the Employee Development Section and the NLRBU will assist in publicizing the available training and educational opportunities.

Section 14. *Applicable to Headquarters (including Division of Judges satellite office) Employees Only:*

Supervisory Training. Wherever practicable, employees will be rotated as temporary supervisors in the absence of the supervisor in units where all such employees are eligible to apply for the position should it become vacant and to the extent that such a program would not conflict with the position descriptions specifying that a particular nonsupervisory incumbent is regularly assigned to act for the supervisor in his or her absence. Except for an allegation of a violation of Article 4 (Rights and Obligations of Employees) Section 1, 2, 5, or 12 or 5 U.S.C. §2302, this Section shall be nongrievable.

Section 15. *Applicable to Field Support Staff Employees Only: Upward Mobility.* The Agency shall offer employees opportunities to improve their skills to prepare for possible promotion to paraprofessional and/or professional positions within the Agency. Accordingly, the Agency shall:

- (a) Provide on-the-job training opportunities in all phases of Agency operations, in a manner consistent with the operating needs of the Regional Office.
- (b) Provide financial assistance including tuition costs, fees, books, and reasonable travel expenses for education, to the extent funds are available.

ARTICLE 6

(c) Maintain, and to the extent required by law negotiate with the NLRBU, a program for training and development of employees for possible promotion to Field Examiner positions (Bridge Program).

(d) Provide counseling for those employees interested in moving into para-professional and/or professional positions.

(e) Provide, to the extent funds are available, whatever other assistance as may be practicable.

(f) Have all information relevant to Regional Office job performance and career development, training seminars, courses, programs, etc., received from the Office of Personnel Management or any other sources posted on the Regional Office bulletin board.

*Section 16. Applicable to Field Support Staff Employees Only: Bridge Program.*⁹ (a) The purpose of this program is to provide carefully selected employees who are currently serving in nonprofessional positions with an opportunity to qualify for professional careers as Labor Management Relations Examiners (Field Examiner). Career development activities to be provided these employees include formal education and training and assignment to specially designed "Bridge" positions which will provide them with qualifying experience and on-the-job training. Specifically, the objectives of this program are:¹⁰

- (1) To achieve more effective utilization of those employees who have the capacity for professional development;
- (2) To permit career movement for capable employees whose current job assignments fail to provide opportunities for professional development;
- (3) To motivate employees toward high achievement and create an environment which promotes high morale.

⁹ The provisions of this program are set forth in "National Labor Relations Board Bridge Program for Labor Management Relations Examiner Positions, General Schedule Positions GS-4, 5, 6 and 7."

¹⁰ A concise, clear fact sheet detailing the requirements and options for bridging and/or converting to a professional position will be available to support staff.

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(b) The parties will continue the pre-bridge program described herein and in OM 06-07, *Pre-Bridge Program* (October 26, 2005) for employees who want to consider bridging or converting to a field examiner position. Such program will include, in addition to the opportunities available under Section 10 of this Article, the following:

- (1) Observing professional work;
- (2) Assisting in professional work;
- (3) Taking courses relevant to the position of field examiner; and
- (4) The use of a paired-professional.

As part of this pre-bridge program, labor-management committees may be utilized to ascertain the availability of reimbursable college level courses. Subject to operating needs, employees who express an interest in attending in-house training relevant to the position of field examiner as part of the pre-bridge program will be given an opportunity to do so.

Participation in the pre-bridge program is not mandatory in order for an employee to be eligible for a Bridge Program position; however, an employee's initiative in participating in these activities may be used as part of the employee's overall background and experience.

(c) During each year of the collective-bargaining agreement, three Bridge Program positions will be announced by a national posting. All such postings will set forth the basic eligibility requirements.

(d) Employees may apply for consideration by filing applications with the Associate General Counsel, Division of Operations-Management. All eligible applicants will be evaluated and ranked in accordance with the provisions set forth in the Bridge Program.

(e) Successful applicants will serve in the Regions in which they currently work.

(f) Performance Evaluations and Performance Appraisals will be prepared for all Bridge Program participants.

- (1) A Performance Evaluation will be prepared, in writing, 90 days following initial assignment to the Bridge position and on a quarterly

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basis thereafter, except for those quarters when an annual Performance Appraisal is required as set forth below.

(2) A Performance Appraisal will be prepared, in writing, on an annual basis following initial assignment to the Bridge position. Such appraisal shall contain, where appropriate, a promotion recommendation, and shall be prepared at least 5 weeks in advance so as to permit a decision by the reviewing official(s) prior to the anniversary date of the employee's entry into the Bridge Program.

(g) A trainee who enters the program at 1 or more grade levels below that of the target position, as set forth in the Bridge Program, will be noncompetitively promoted to the next higher grade after each full year in the program up to and including grade GS-7, providing the trainee has achieved appropriate performance ratings and has met all of the other requirements for promotion set forth in the Bridge Program.

(h) Where a Bridge Program participant has met all of the requirements for promotion under the Bridge Program, but fails to receive a timely promotion through administrative or clerical error, or because of management's failure to comply with the procedural requirements of the Bridge Program, this Section or, as applicable, Article 9 (Performance Appraisal System), the employee shall promptly receive retroactive pay and seniority from the proper date.¹¹

(i) When an employee formerly occupying a competitive position has been selected for the Bridge Program and begins the second year of the program, his or her former position, if filled, will be filled on a temporary basis pursuant to the competitive procedures of Article 8 (Promotions). Upon the conversion of the Bridge Program participant to a Field Examiner position, the temporary assignment of the replacement employee may be made permanent without further competition.

(j) Bridge Program participants, during their final 2 years of the program, will be afforded clerical assistance to the extent afforded professional employees.

¹¹ This Subsection does not constitute a waiver of any right which an employee or the NLRBU may have to seek, as a remedy for a grievance under this Agreement, a retroactive promotion with appropriate pay and seniority as permitted by applicable law and government-wide rule and regulation.

ARTICLE 6

(k) Reimbursement for courses under the Bridge Program shall be in accordance with the procedures set forth in Article 7, Section 2. However, the restrictions in Article 7, Section 2 (c) do not apply.

(l) In order to allow for promotions during the Bridge Program, and because the nature of the Bridge Program precludes a final determination as to the candidate's conversion until completion of the entire program, applicants will be required to sign an acknowledgment that all promotions during the Bridge Program are temporary and that upon successful completion of the Bridge Program: (1) if the employee is converted to the target position by reclassification at the same grade, the most recent promotion received during the Program will become permanent; or (2) if the employee is converted to the target position by promotion to a higher grade, such action shall be a permanent promotion.

(m) The parties agree that the use of temporary promotions, as set forth in Section (l) above, is for the sole purpose of returning unsuccessful Bridge Program participants to their former clerical positions without the need to resort to adverse action procedures should such position be at a lower grade, and that the use of temporary promotions does not mean that a Bridge Program participant will otherwise be reduced in grade while in the Bridge Program.

Section 17. The Agency agrees to consult and, to the extent required by law, negotiate regarding any changes in the orientation and training program(s) to be utilized in the Agency.

Section 18. Advisory Committee on Training. A management-union Advisory Committee on Training will be established and will meet on a semi-annual basis. Of the two committee meetings, one will be in person in headquarters and one will be conducted by videoconference. The Committee shall consist of two management representatives and two NLRBU representatives. NLRBU representatives on the Committee shall be on official time in accordance with Article 28, Section 4. Arrangements for any additional meetings will be by mutual agreement of the parties.

Subject to budgetary and staffing considerations, NLRBU members of the committee will be permitted to take training if the course or seminar is related to the performance of their duties on the committee. The application to take such training, and its processing and approval, will be in accord with the procedures of Article 7. The time spent in such training, including reasonable travel time, shall be duty time. The obligation of the Agency

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pursuant to this paragraph is limited to no more than \$2,500 (aggregate cost of the training and any travel and per diem costs) and no more than 48 hours (inclusive of compensated travel time) to any individual committee member in a 24 month period. The training provided pursuant to this paragraph is in addition to the right of committee members to apply and be approved for training unrelated to the operation of the committee and the costs associated with training provided pursuant to this paragraph are not to be included as part of the overall limits on training costs for the bargaining unit noted in Article 7.

ARTICLE 7
EDUCATIONAL DEVELOPMENT

Section 1. General. Training through employee participation in educational courses and seminars (including institutes, symposia, and conferences, etc.) is recognized as a vital method of obtaining better performance on the job and as an important contribution to the career development of Agency employees. To the extent funds are available from the amount in Section 4, approval of requests to take courses or seminars will be granted where the course or seminar relates to the performance of duties connected to the employee's current position, or where the course or seminar will reasonably contribute to the career development of the employee with the Agency. Requests to enroll in and attend such courses and seminars will be approved and expenses reimbursed in accordance with the provisions of this Article set out below.

Section 2. Courses¹² (a) Employees desiring reimbursement for approved courses must, pursuant to law and applicable government-wide rule and regulation, receive prior approval for such reimbursement. Requests will be made by submitting an electronic NLRB-182 to the Branch Chief, Regional Director or designee. Such requests must be accompanied by

- (1) a description of the course (attached to, or documented on, the training request form),¹³
- (2) estimated costs including tuition, fees, books, and, as applicable, travel expenses,¹⁴ and
- (3) a commitment that the employee will remain in the employment of the Agency six months following the completion of the training, or will, consistent with 5 CFR § 410.309, be liable to the Agency for reimbursement. The training request must be submitted to the

¹² An employee will be limited to reimbursement for a maximum of six courses in any particular degree program during the life of this Agreement, whether the courses be taken in one or more institutions of learning.

¹³ Such description may include, for example, catalogue description, course outline or syllabus, table of contents of textbook, and the like.

¹⁴ Except for courses required by management (including courses required as part of the Performance Improvement Plan to be provided an employee under Article 9 (Performance Appraisal System), travel expenses for courses will not be approved for professional employees.

ARTICLE 7

Regional Director, Branch Chief or designee at least two days before the beginning of the course, absent extenuating circumstances, and supported by available written documentation. Upon approval of the training request by the Regional Director or Branch Chief, management will timely submit the NLRB-182 to the Office of Employee Development for final approval. If the employee will receive financial aid from another source for a course, and the employee is not required to repay the financial aid (e.g., a grant or scholarship), the employee must disclose the amount to the Office of Employee Development.

(b) The Agency has determined that Office of Employee Development (OED) has been designated to review and approve reimbursement requests. If the OED determines that the description of the course is insufficient, the employee will be advised promptly and provided a single opportunity to supplement the description with additional information, as available, before a decision is made to approve or deny the course. Timely and appropriate requests for reimbursement normally will be approved or denied and the decision promptly communicated to the employee, prior to the beginning of the course. However, in situations where additional information is not available on a timely basis, management will, nevertheless, consider late provided information in determining whether the course should be approved. In no event will the Agency be liable to reimburse an employee for a course which does not meet the appropriate test for reimbursement set forth in Section 1 above.

(c) Employees may be reimbursed, under this Article, for up to \$4,000 for course(s) tuition and fees per fiscal year.

(d) (1) *Applicable to Professional Employees.* Duty time for professional employees taking courses will normally not be granted except where required by management (including courses required as part of a Performance Improvement Plan to be provided an employee under Article 9 (Performance Appraisal System)).

(2) Consistent with 5 CFR § 610.122, and when a course is not available during non-duty hours within 2 semesters or 4 quarters from the time of the request, professional and support staff employees who are working a regular tour of duty (i.e., not working a Gliding Flex, Maxiflex, or 5-4/9 Compressed Work Schedule) may be authorized to work an adjusted work schedule of not less than 40 hours per week to take approved courses when not inconsistent with

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operating needs. The adjusted work schedule shall not involve more than 2 days a week and no more than 1 hour on each of those days (the 1 hour to be taken either at the beginning or end of a workday). The adjusted work schedule may also be altered when operating needs dictate.

(e) *Applicable to Support Staff Employees.* To the maximum extent consistent with operating needs, duty time shall be granted to support staff employees taking approved courses, limited to those relating to: (1) their current position; or (2) a Group Secretary (up to the full performance level GS-5) position if the employee is in a lower graded career ladder. Duty time shall also be granted to employees taking courses which are required by management (including courses required as a part of a Performance Improvement Plan to be provided an employee under Article 9 (Performance Appraisal System)).

(f) *Applicable to Support Staff Employees.* Duty time for support staff employees taking approved courses relating to higher graded, paraprofessional or professional positions to which the employee may be promoted, will normally not be granted except when such opportunities are unavailable during non-duty hours. However, in such situations, duty time may be denied where the employee's absence would significantly diminish the ability of the employee to perform the responsibilities normally required of his or her position and grade or interfere with the efficient operation of the Office.

(g) *Applicable to Support Staff Employees.* Moreover, to the extent funds are available, support staff employees will be reimbursed for travel expenses¹⁵ incurred in relation to their attendance at approved courses. Such travel reimbursement will normally be limited to the greater metropolitan area of the office to which the employee is assigned.

(h) Employees shall provide evidence of successful completion of courses for which reimbursement has been made under this Article. For courses in which letter grades are assigned, successful completion shall be a grade of "C" or better, or its equivalent in numerical grading systems.¹⁶ Employees who do not provide evidence of successful completion will not be

¹⁵ This does not include hotel and per diem expenses.

¹⁶ If the course is "pass/fail" the employee must receive a "pass" to have successfully completed the course.

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eligible for advance payment for subsequent courses. In such situations, requests for reimbursement must, nevertheless, be made at least 2 days, prior to the beginning of the course, but actual payment of approved reimbursement will not be made until and unless the employee has provided evidence of successful completion of the course.

(i) Absent extenuating circumstances, payment for a course which the employee fails to complete may, pursuant to 5 CFR § 410.405, be subject to recovery from the employee in accordance with Agency procedures.

Section 3. Seminars, Institutes, Symposia, and Conferences. (a) Employees desiring reimbursement for approved seminars, institutes, symposia, or conferences must, pursuant to law and applicable government-wide rule and regulation, receive prior approval for such reimbursement. Requests will be made by submitting an electronic NLRB-182 to the Branch Chief, Regional Director or designee. Such requests must be accompanied by a description of the training (attached to, or documented on, the training request form) and estimated costs, including tuition, fees, books, and, as applicable, travel expenses. The training request must be submitted to the Regional Director, Branch Chief or designee at least two days before the beginning of the course, absent extenuating circumstances, and supported by available written documentation. Upon approval of the training request by the Regional Director or Branch Chief, management will timely submit the NLRB-182 to the Office of Employee Development for final approval. Timely and appropriate requests for reimbursement will be approved or denied and the decision promptly communicated to the employee, normally prior to the beginning of the training.

(b) Employees desiring to attend seminars, institutes, symposia, or conferences during duty hours must submit requests for duty time to the employee's Branch Chief or Regional Director. Such requests will be granted except where the employee's absence would significantly diminish the ability of the employee to perform the responsibilities normally required of his/her position and grade, or interfere with the efficient operation of the office.

(c) Moreover, to the extent funds are available, employees will be reimbursed for transportation expenses¹⁷ incurred in relation to their attendance at seminars, institutes, symposia, and conferences. Such transportation reimbursement will normally be limited to the greater

¹⁷ This does not include hotel and per diem expenses.

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metropolitan area of the duty station to which the employee is assigned. In addition, in the event such opportunities are not reasonably available within the greater metropolitan area of the duty station to which the employee is assigned, reimbursement for actual transportation expenses incurred by an employee in connection with attendance at seminars, institutes, symposia, and conferences may be made, provided that such reimbursement to an employee for all such transportation shall not exceed \$200 per fiscal year.

(d) Absent extenuating circumstances, payment for a seminar, institute, symposium, or conference which the employee fails to complete may, pursuant to 5 CFR § 410.405, be subject to recovery from the employee in accordance with Agency procedures.

(e) Employees may be reimbursed, under this Article, for up to \$1,500 per fiscal year for seminars, institutes, symposia and conferences. The first \$125 cost of an employee attending a seminar, institute, symposia, or conference which is sponsored by the Agency will not be included in the limit on total reimbursable fees per fiscal year set forth in this Section, but the remaining cost will be included. However, if attendance at a seminar, institute, symposium, or conference which is sponsored by the Agency is required, none of the cost will be included in the limit on total reimbursable fees.

Section 4. Employees may be reimbursed for no more than a total of \$4,000 per fiscal year under Section 2 and Section 3 of this Article.

Section 5. Consistent with budgetary considerations, the following amounts will be available during each fiscal year for the above-listed purposes:

Fiscal Year 2013: \$160,000
Fiscal Year 2014: \$170,000
Fiscal Year 2015 and thereafter: \$180,000

These amounts are for employee training only and do not include any training or other expenses for supervisory employees, EEO Counselor training, or other training required by management (including that required by management as part of the Performance Improvement Plan to be provided by management under Article 9 (Performance Appraisal System)). The Agency will not delay approval of requests and payments for training that will take place after the close of the fiscal year unless required by law, government-wide rule or regulation.

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Section 6. The Agency will provide the NLRBU, semiannually, with information regarding the expenditure of funds under this Article, and the list of courses which have been approved and denied. In addition, the Agency will provide to each local union semiannually the list of courses which have been approved and denied.

Section 7. Training of NLRBU Representatives at NLRBU Conventions.

Employees who are NLRBU Representatives and who attend the NLRBU convention will be approved for 8 hours of duty time for training that is directed to the maintenance and improvement of a mutually beneficial labor relations environment. The Union will submit the training program, and the list of employee attendees, to the Assistant General Counsel, Labor and Employee Relations, at least one month prior to the NLRBU convention. The Agency will not be responsible for any cost of this training.

ARTICLE 8
PROMOTION AND INTERNAL PLACEMENT POLICY

PART A. GENERAL

Section 1. General. (a) The Agency subscribes to the policy of “promoting from within the Agency.” Vacancies in unit positions will normally be filled by qualified applicants among employees of the Agency. Vacancies in such positions filled by appointment from outside the Agency will normally include positions at the entrance grade, positions for which eligible’s are in short supply, or any position if in the judgment of the Agency the appointment from outside will add to the Agency’s personnel resources.¹⁸

(b) Promotions up to the full performance level will be effectuated without competition with other employees (“non-competitive promotions”).

(c) Where an employee has met all of the requirements for noncompetitive promotion but fails to receive the promotion timely through administrative or clerical error or because of management’s failure to comply with procedural requirements of this Article or Article 9 (Performance Appraisal System), the employee shall promptly receive retroactive pay and seniority from the proper date.¹⁹

(d) Application of Time Policy and Periods. The time policy and time periods set forth in Part B, Section (1), Part B, Section (2), and Part C, Section (2)(d)(2) of this Article do not preclude earlier promotion for those employees, including Bridge Program graduates, with meritorious factors such as prior relevant experience who by their performance indicate that they have demonstrated the ability to perform at the next higher grade level.

Section 2. Voluntary Requests for Demotions. The Agency will advise any unit employee who voluntarily requests a demotion of the full effect of the demotion on pay and benefits.

¹⁸ Except when filling an entry level position, employees will be notified in advance and advised how to apply for a position when the Agency decides to appoint from the outside.

¹⁹ This Subsection does not constitute a waiver of any right which an employee or the NLRBU may have, to seek as a remedy for a grievance under this Agreement, a retroactive promotion with appropriate pay and seniority as permitted by applicable law and government-wide rule and regulation.

Section 3. Other Noncompetitive Promotions. In addition to the non-competitive promotions described in Parts B and C of this Article, other types of non-competitive promotions include: (1) a promotion resulting from an employee's position being reclassified at a higher grade because of an accretion of additional duties and responsibilities, issuance of new classification standards, or the correction of an initial classification error; (2) selection of an employee from a Reemployment Priority List for a position at a higher grade than the one last held; and (3) re-promotion to a grade or position from which an employee was demoted without personal cause and not at his or her request.

Such promotions will be effective at the beginning of the first pay period after all requirements of applicable law and government-wide rule and regulation have been met.

PART B. PROFESSIONAL EMPLOYEES

Section 1. Timing of Noncompetitive Promotions of Field Examiners.

(a) The full performance level is currently established at grade GS-13. Consistent with this Article and Article 9 (Performance Appraisal System), promotions up to the full performance level will be based upon the incumbent's development and performance. The time policy and time periods set forth herein are not to be interpreted to imply automatic promotion but merely establish a progression rate whereby employees who have demonstrated their ability to perform the work of the next higher grade level will be promoted.

(b) Field Examiners shall be eligible for consideration for promotion to the next higher grade upon the completion of 1 year in grade as a Field Examiner with the Agency, and annually thereafter until they reach Grade GS-12, and upon completion of 24 months as a GS-12 Field Examiner, to the full performance level (Grade GS-13).

Field Examiners who meet the requirements of the performance appraisal system (including having demonstrated their ability to perform the work of the next higher grade level) shall be promoted to the next higher grade level after 1 year in grade as a Field Examiner with the Agency and annually thereafter until they reach Grade GS-12, and after 24 months as a GS-12 Field Examiner, to the full performance level (Grade GS-13).

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(c) The minimum period for consideration for promotion for a Bridge Program Graduate from GS-7 to GS-9 Field Examiner position, absent accelerated promotion, will be:

- (1) Twelve months in grade as a GS-7 Labor Management Relations Assistant and 6 months in grade as a GS-7 Field Examiner; or
- (2) Twenty-four months in grade as a GS-7 Labor Management Relations Assistant and 3 months in grade as a GS-7 Field Examiner; or
- (3) For employees who took a downgrade to the GS-7 level to enter the Bridge Program, 36 months in grade as a GS-7 Labor Management Relations Assistant, immediately upon conversion to a GS-7 Field Examiner.

Section 2. Timing of Noncompetitive Promotions for Attorneys. (a) The full performance level is currently established at grade GS-14. Consistent with this Article and Article 9 (Performance Appraisal System), promotions up to the full performance level will be based upon the incumbent's development and performance. The time policy and time periods set forth herein are not to be interpreted to imply automatic promotion but merely establish a progression rate whereby employees who have demonstrated their ability to perform work of the next higher grade level will be promoted.

(b) Attorneys shall be eligible for consideration for promotion to the next higher grade upon the completion of 1 year in grade as a Law Clerk and Field Attorney with the Agency, and annually thereafter until they reach Grade GS-13, and after 36 months as a Grade GS-13 Field Attorney, to the full performance level (Grade GS-14).

Field Attorneys who meet the requirements of the performance appraisal system (including having demonstrated their ability to perform the work of the next higher grade level) shall be promoted to the next higher grade level after 1 year in grade as a Law Clerk and Field Attorney with the Agency and annually thereafter until they reach Grade GS-13, and after 36 months as a Grade GS-13 Field Attorney, to the full performance level (Grade GS-14).

Section 3. Procedures for Filling Compliance Officer Positions (a) The following procedures will be utilized in filling GS-13 or GS-13/14 Compliance Officer Positions:

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(1) The competitive procedures which will be used in considering employees for placement on a register for Compliance Officer positions are set forth below. When a Compliance Officer position is to be filled, the position vacancy will be announced by a posting in the applicable areas of consideration.

First Area--All GS-12 Field Examiners in the Region who have served at least 12 months in that grade, and all GS-13 Field Examiners in the Region, and all write-in applicants who meet the applicable qualifications, and who have, prior to the posting date, applied for consideration in accordance with Section 3(h) below.

Second Area--All GS-12 Field Examiners in the Agency who have served at least 12 months in that grade and all GS-13 Field Examiners who respond to a nationwide posting.

(b) If the Agency decides to post the position at the GS-14 Level, the competitive procedures which will be used in considering employees for placement on a register for Compliance Officer positions are set forth below. When a GS-14 Compliance Officer position is to be filled, the position vacancy will be announced by a posting in the applicable areas of consideration.

First Area – All GS-13 Field Examiners in the Region who have 1 year of specialized compliance experience and all write-in applicants who meet the applicable qualifications, and who have, prior to the posting date, applied for consideration in accordance with Section 3(h) below.

Second Area – All GS-13 Field Examiners who have 1 year of specialized compliance experience who respond to a nationwide posting.

(c) Rating officials will evaluate in a fair and objective manner and rank the candidates in the appropriate area of consideration on the basis of the factors set forth in paragraph (d) below, and shall consider the last three appraisals of each candidate, including any comments submitted in accordance with Article 9, Section 12 of this Agreement.

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(d) The factors to be considered by the rating officials will include:²⁰

- (1) Presence of knowledge, skills, and abilities required for the most effective performance of the specific job available;
- (2) The quality and scope of past and present job experience and performance as it relates to the specific job;
- (3) Overall education and training;
- (4) Special achievements, awards and recognition; and
- (5) Estimation of individual potential.

(e) The three candidates ranked the highest by the rating officials shall be designated as "Best Qualified" and the list will be certified in writing and transmitted to the Regional Director in the office where the vacancy exists. Regional management will conduct interviews of the candidates (the interview will be conducted by videoconference if the candidate is outside the Regional office) and will make a recommendation to the selecting official, who is the Associate General Counsel in the Division of Operations-Management.

(f) *Grievability of Selection.* Consistent with law and government-wide rule and regulation, the selecting official may select any candidate on the best-qualified list. Except for an allegation that an employee's non-selection is in violation of Article 4, Sections 1, 2, 5, or 13, or any law or government-wide rule and regulation affecting conditions of employment, nonselection from a list of candidates properly certified and ranked in accordance with this Article shall not be subject to the grievance or arbitration procedure.

(g) *Availability of Information.* Upon completion of the Best Qualified List for the competitive position of Compliance Officer, the Agency will, upon request, inform the inquiring candidate (1) whether he or she was found eligible on the basis of the minimum qualification requirements and (2) whether he or she was in the best qualified group. Upon request, the Agency will promptly inform an employee of the determining factors as to why he or she was not designated as best-qualified. Employees who apply for the

²⁰ The employee's three most recent appraisals shall be considered by the rating and ranking panel, the recommending official and the selecting official in the competitive selection process.

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position of Compliance Officer will be promptly informed of who was selected.

The foregoing shall not waive the right of the NLRBU to receive any information to which it is entitled under law or this Agreement.

(h) Write-in Register for Compliance Officer Positions. Qualified unit employees may enter the first area of consideration as defined in Section 3(a)(1) under the conditions listed below:

(1) The Agency will maintain a register for employees who qualify for these positions. Management will establish an electronic write-in register that will be available for viewing by employees and by the NLRBU on the Agency intranet.

(2) The electronic register will indicate the date of registration. The employee must have registered before the applicable posting date and must indicate the specific position(s) and Office(s) for which the employee wishes to be considered. The application will be in effect for a period of 1 year from the employee's registration.

(3) Employees selected but who, upon notification of selection, refuse the position, may be deleted from the register. Such employees will not be eligible to relist their names on the register for a period of 1 year.

Section 4. Temporary Assignment to Higher Graded Positions. (a) When it is reasonably expected that an employee will be temporarily assigned to a higher graded competitive position for a period of 4 weeks or longer, the employee, if he or she meets the minimum eligibility requirements for the position, will receive an immediate temporary promotion to the appropriate grade level.²¹

(b) When temporary promotions referred to in (a) above are occasioned by temporary vacancies which will reasonably be expected to exceed 8 weeks, the following procedures will apply: Regional Directors will do an annual solicitation, on a Region-wide basis, of interest for temporary promotions to higher graded positions, once upon execution of the collective-

²¹ Employees who are temporarily assigned to higher graded positions but who are ineligible to receive the higher rate of pay due to time in grade considerations or lack of specialized experience may be granted an incentive award.

bargaining agreement and thereafter on October 1 of each year. Employees will identify which positions they are interested in, and may add their names or remove their names at any time. Selections will be made from those employees on the register at the time of the selection.

(c) When management assigns an employee to fill a position temporarily, it will, consistent with operating needs and the duration of the assignment, relieve that employee of his or her regular duties. This obligation does not apply to employees assigned to temporarily perform only a portion of the duties of another person.

PART C. SUPPORT STAFF EMPLOYEES

Section 1. Listing of Competitive and Non-Competitive Support Staff Positions. The Agency will establish a listing of all support staff bargaining unit positions on the Agency intranet. The listing will indicate, for each position, whether the position will be filled through competitive or non-competitive procedures. The listing will include current telephone and e-mail contact information of the Agency manager who will provide inquiring employees with the minimum qualifications and eligibility requirements of the position(s). The listing will be kept current.²²

Section 2. Noncompetitive Promotions: (a) With respect to noncompetitive promotions, it is the policy of the Agency to promote each employee to each successive higher grade in an established career ladder as rapidly as is consistent with law and applicable government-wide rule and regulation and upon the incumbent's satisfaction of the conditions set forth in Subsection 2(b) of this Part and the requirements of the Performance Appraisal System for employees.

(1) Competitive field positions in the bargaining unit currently include:

- Support Staff Assistant to the Office Manager
- Election Clerk
- Secretary to the Compliance Officer
- Docket, Issuance and Files Clerk

²² Until the Agency posts the list of competitive and non-competitive support staff positions described in Part C, Section (C)(1) above, it will advise the NLRBU if it determines to fill a bargaining unit Headquarters support staff position (including Division of Judges satellite offices) through competitive procedures.

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Secretary to Group Supervisor
Secretary to the Assistant to the Regional Director
Secretary to the Deputy Regional Attorney
Secretary to the Deputy Regional Director
Secretary to the Regional Attorney
Language Assistant²³
Language Specialist²⁴
Election Assistant²⁵
Compliance Assistant²⁶
Secretary to the Resident Officer
Secretary to the Deputy Officer-in-Charge
Information Technology Specialist
Computer Assistant
Automation Staff Assistant
Case Processing Assistant
Litigation Support Assistant

NxGen Program Analyst (except for confidential, managerial or supervisory employees in the Division of Operations Management)

(b) Noncompetitive promotions include promotions within a career ladder, or to a noncompetitive position with a different career ladder having no known higher promotion potential, up to established full performance levels. Noncompetitive promotions are not subject to the posting procedure. With respect to promotions within a career ladder, they will be effectuated when the incumbent meets the basic eligibility requirements for the next higher grade and has demonstrated the ability to perform at such a level.

(c) Noncompetitive positions in the bargaining unit include all unit positions not listed in Part C, Section (2)(a)(1) of this Article.

²³ The positions of Language Assistant and Language Specialist shall be posted simultaneously in the first and second areas of consideration.

²⁴ The positions of Language Assistant and Language Specialist shall be posted simultaneously in the first and second areas of consideration.

²⁵ These positions will be filled through noncompetitive promotion of the Election Clerk and Secretary to the Compliance Officer, respectively, if the vacancy announcements governing selection for those positions specifically provided for noncompetitive promotion of the incumbent.

²⁶ See footnote immediately above.

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(d) Timing of Noncompetitive Promotions. (1) Consistent with this Article and Article 9 (Performance Appraisal System), promotions up to the full performance level will be based upon the incumbent's development and performance. The time policy and time periods set forth herein are not to be interpreted to imply automatic promotion but merely establish a progression rate whereby employees who have demonstrated their ability to perform the work of the next higher grade level will be promoted. Although these time periods do not preclude accelerated promotion for those employees with meritorious factors such as prior relevant experience who by their performance indicate they have demonstrated the ability to perform at the next higher grade level, normally, employees will not be eligible for consideration unless they have met the appropriate length of Agency service requirements.

(2) Provided the employee satisfies the minimum qualifications and eligibility requirements of the position, the employee will, in accordance with Article 9, be appraised and receive a promotion recommendation in accordance with the time periods set forth below. Additionally, an employee who meets the position requirements for a grade level higher than that at which hired, will be evaluated at the end of the minimum appraisal period (90 days) and, if the employee's performance warrants, will be promoted to the level for which qualified, provided the position the employee is in carries that grade.

<i>Position Grade Level</i>	<i>Time in Grade with the Agency</i>
GS-3 to GS-4	6 months
GS-4 to GS-5	6 months
Above GS-5	9 months

(3) Employees who meet the requirements of the performance appraisal system (including having demonstrated their ability to perform the work of the next higher grade level) shall be promoted to the next higher grade level of their career ladder in accordance with this Subsection until they reach (up to and including) the full performance level of their career ladder.

Section 3. Competitive Promotion Procedures for Support Staff Employees.

(a) Competitive Promotions. The filling of competitive positions shall be handled through the posting procedure. Temporary assignments not to

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exceed 45 days and the filling of positions under Subsection (b) herein are excluded from this requirement. In-house recruitments must be consistent with the Agency Career Transition Assistance Plan that became effective on April 29, 1996, with respect to local surplus and displaced employees. Similarly, any outside recruitment must be consistent with the Interagency Career Transition Assistance Plan. (See 5 CFR Part 330, Subpart G).

(b) Employees in positions which have promotion potential no greater than GS-3 or GS-4 but who become eligible to compete for Clerk (Docket) or Group Secretary positions with higher known promotion potential will, when staffing considerations permit, be considered for competitive promotion/reassignment to such positions without resorting to the posting procedure. However, in such cases, all employees in the applicable office who are eligible for such competitive promotion/reassignment shall automatically be considered as candidates for the position. Selection, if made, shall be made in accordance with the procedures for competitive positions.

(c) When an existing competitive position becomes vacant or if a new competitive position is created, the position will be posted within 10 working days of the decision to fill the position. Such announcements shall indicate the full grade potential for the position and be posted for a minimum of 7 working days. All vacancy announcements will be sent to all Agency employees by e-mail. When the announcement of a vacancy is posted, employees who are interested in being considered for the position must comply with the filing requirements set forth in the vacancy announcement. Such posting will indicate to whom a response to the posting is to be made.

(d) Write-in Applications for Competitive Positions.²⁷ Employees of the Agency who meet the minimum qualifications and eligibility requirements not included in the first area of consideration for a position to be filled competitively under this Article may enter the first area of consideration as defined in Part C, Section (3)(e) under the conditions listed below:

(1) The Agency will maintain a register for employees who qualify for these positions. Management will establish an electronic write-in register that will be available for viewing by employees and by the NLRBU on the Agency intranet.

²⁷ Write-in procedures do not apply to NxGen Program Analyst positions.

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(2) The electronic register will indicate the date of registration. The employee must have registered before the applicable posting date and must indicate the specific position(s) and Office(s) for which the employee wishes to be considered. The application will be in effect for a period of 1 year from the employee's registration.

(3) Employees selected but who, upon notification of selection, refuse the position, may be deleted from the register. Such employees will not be eligible to relist their names on the register for a period of 1 year.

(e) Areas of Consideration.

(1) "Areas of Consideration" which will be used in considering employees and other candidates for placement on a register of eligibles for filling competitive unit positions are set forth below. The only exceptions to the "Areas of Consideration" will be hardship situations.

(A) Competitive Unit Positions in Field Offices Except Bargaining Unit NxGen Program Analyst Positions

First Area--All employees in the Region who are qualified for the position and all qualified employees who have expressed, prior to the posting date, a written interest in the position in accordance with Part C, Section (3)(d) of this Article.

Second Area-- (applies to Regions 2/22/29; the Washington Resident Office Region 10; Regions 20/32; and Regions 21/31) —All Agency employees within the metropolitan area in which the vacancy occurs, who are qualified for the position and who respond to a posting.

Second Area for all other Field Offices --All outside applicants within the metropolitan area in which the vacancy occurs, who are qualified for the position and who respond to a posting.

Third Area--All outside applicants who are qualified for the position and who respond to a nationwide posting.

(B) NxGen Program Analyst Positions

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First Area--All unit employees (including General Counsel-side and Board-side employees) who are qualified for the position.

Second Area--All Agency employees who are qualified for the position and respond to a nationwide posting.

(C) Competitive Unit Positions in Headquarters

First Area--All Headquarters employees (including Washington Division of Judges) who are qualified for the position and all qualified employees who have expressed, prior to the posting date, a written interest in the position in accordance with Part C, Section(3)(d) of this Article.

Second Area---All employees in the Washington Resident Office, who are qualified for the position and who respond to a posting.

Third Area--All outside applicants within the metropolitan area in which the vacancy occurs, who are qualified for the position and who respond to a posting.

Fourth Area--All employees in the Agency who are qualified for the position and who respond to a nationwide posting.

(D) Competitive Unit Positions in the Division of Judges Offices in Atlanta, New York, and San Francisco.

First Area--All employees in the Division of Judges Office who are qualified for the position.

Second Area--All Agency employees within the metropolitan area in which the vacancy occurs, who are qualified for the position and who respond to a posting.

Third Area--All employees in the Agency who are qualified for the position and who respond to a nationwide posting.

(2) In the event that the first area of consideration, as described above, yields four or more eligible candidates who have stated that they will accept appointment to the position to be filled, the register will be limited to the first area and management will consider and exhaust this register before expanding the register to include candidates in the second area of consideration. However, in Offices

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with 15 or fewer unit and nonunit support staff and nonprofessional employees at the time the vacancy occurs, if the first area of consideration yields 3 or more eligible candidates who have stated they will accept appointment to the position to be filled, the register will be limited to the first area and management will consider and exhaust this register before expanding the register to include candidates in the second area of consideration.

(3) If the first area of consideration (where applicable) does not yield the number of interested eligible candidates indicated above, a new register may be established which will include candidates from the first area of consideration, as well as eligible candidates from the second area of consideration who respond to the posting.

(4) If the second area of consideration does not yield the number of interested eligible candidates indicated above, a new register may be established which will include candidates from the first and second areas of consideration, as well as eligible candidates from the third area of consideration who respond to the posting.

(5) If resort is made to the third area of consideration and management considers and exhausts the register and determines not to select any of the candidates, management may, consistent with applicable law and government-wide rule and regulation, fill the position without further resort to the competitive procedures of this Agreement.²⁸

(6) Management will provide the NLRBU with contemporaneous notice when resort is made to the second area of consideration and when resort is made beyond the second area of consideration.

²⁸ For Washington Local positions, if the third area of consideration does not yield the number of interested eligible candidates indicated above, a new register may be established which will include candidates from the first, second and third areas of consideration, as well as eligible candidates from the fourth area of consideration who respond to the posting. Thereafter, if resort is made to the fourth area of consideration and management considers and exhausts the register and determines not to select any of the candidates, management may, consistent with applicable law and government-wide rule and regulation, fill the position without further resort to the competitive procedures of this Agreement.

(f) Evaluation and Ranking of Candidates for Competitive Positions. The following procedures shall be utilized in filling vacancies in competitive positions referred to in Part C, Section 1.

(1) The rating official(s) will evaluate in a fair and objective manner and rank candidates in the appropriate area of consideration on the basis of the following factors and shall rely on the three most recent performance appraisals (which include the statements submitted in accordance with Article 9, Section 12 of candidates, to the extent applicable, in the consideration of such factors:

(A) Presence of knowledge, skills, and abilities required for the most effective performance of the specific job available;

(B) The quality and scope of past and present job experience and performance as it relates to the specific job; and

(C) Overall education and training;

(D) Special achievements, awards and recognition; and

(E) Estimation of individual potential.

(2) Competitive Unit Positions. The three candidates ranked the highest by the rating official(s) for competitive unit positions shall be designated as best qualified and they shall be certified, in writing, and submitted to recommending, reviewing and/or selecting officials who shall be different from and at an organizational level above that of the rating official(s). Where, based upon a consideration of the above-listed factors, the qualifications of two or more candidates are equivalent, Agency seniority shall prevail. Where there are less than four qualified candidates, all may be referred to the selecting official.

(g) Timing of Selection for Competitive Unit Positions. The selection or nonselection will be made within 20 working days of the closing date of the applicable posting. The time requirement may be tolled in cases where the selecting official is away from the office and then only to the extent of his or her absence, but in no event for longer than 5 working days.

(h) Grievability of Selection. Consistent with law and government-wide rule and regulation, a selecting official may select any candidate on the best qualified list. Except for an allegation that an employee's nonselection is in

violation of Article 4, Sections 1, 2, 5, or 13, or any law or government-wide rule and regulation affecting conditions of employment, nonselection from a list of candidates properly certified and ranked in accordance with this Article shall not be subject to the grievance or arbitration procedure.

(i) Availability of Information. (1) Upon completion of the Best Qualified List for competitive unit positions, the Agency will, upon request, inform the inquiring candidate: (a) whether he or she was found eligible on the basis of the minimum qualification requirements; and (b) whether he or she was in the best qualified group. Upon request, the Agency will promptly inform an employee of the determining factors as to why he or she was not designated as best-qualified. Employees who apply for competitive unit positions will be promptly informed of who was selected.

(2) Upon request, any employee: (i) will be shown any record of production or any supervisory appraisal used in considering him or her for promotion; and (ii) will be informed in what areas, if any, the employee should improve himself or herself to increase his or her chances for promotion.

The foregoing shall not waive the right of the NLRBU to receive any information to which it is entitled under law or this Agreement.

Section 4. Temporary Assignments to Higher Graded Positions. (a) When it is reasonably expected that an employee will be temporarily assigned to a higher graded competitive position (not including incumbency-based reclassifications) for a period of 21 calendar days or longer, the employee, if he or she meets the minimum qualifications and eligibility requirements for the position will receive an immediate temporary promotion to the appropriate grade level.²⁹

(b) When the temporary promotions referred to in (a) above are occasioned by temporary vacancies which will reasonably be expected to exceed 45 days, the competitive procedures in Section 3 above shall apply. More than one employee may be selected on the basis of a single posting.

(c) When management assigns an employee to fill a position temporarily, it will, consistent with operating needs, relieve that employee of his or her

²⁹ Employees who are temporarily assigned to a higher graded position but who are ineligible to receive the higher rate of pay due to time in grade considerations or lack of specialized experience may be granted an incentive award.

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regular duties. This obligation does not apply to employees assigned to temporarily perform only a portion of the duties of another position.

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PERFORMANCE APPRAISAL SYSTEM

Section 1. Definitions. Pursuant to applicable statute (Section 4301, et seq., of 5 U.S.C. Chapter 43) and government-wide rule and regulation (5 CFR Parts 430 and 531), the below set forth terms have been defined and when referred to throughout this Agreement shall have the identical meaning as established by appropriate governmental authority and the courts.

(a) "Acceptable Level of Competence" means performance by an employee that warrants advancement of the employee's rate of basic pay to the next higher step of the grade or the next higher rate within the grade (as defined in 5 CFR, Part 531) of his or her position, subject to the requirements of 5 CFR § 531.404. To be performing at an "acceptable level of competence," an employee must have a rating of record of "Fully Successful" or higher.

(b) "Appraisal" means the process under which performance is reviewed and evaluated.

(c) "Appraisal Period" means the established period of time for which performance will be reviewed and a rating of record will be prepared. The minimum appraisal period is 90 days.

(d) "Appraisal Program" means the specific procedures and requirements established under the policies and parameters of an agency appraisal system.

(e) "Appraisal System" means a framework of policies and parameters established by an agency as defined at 5 U.S.C. § 4301(1) for the administration of performance appraisal programs under Subchapter I of Chapter 43 of Title 5 U.S.C., and 5 CFR, Part 430.

(f) "Critical Element" means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable.

(g) The "Linkage Chart," established by management, is a description of personnel action for which an employee is eligible based upon the achievement of designated performance standard ratings, ratings of record, or other criteria.

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(h) "Non-Critical Element" means a dimension or aspect of individual, team, or organizational performance, exclusive of a critical element, that is used in assigning a summary level. Such elements may include, but are not limited to, objectives, goals, program plans, work plans, and other means of expressing expected performance.

(i) "Performance" means accomplishment of work assignments or responsibilities.

(j) "Performance Improvement Plan" means the program formulated to provide an employee, whose performance if not improved will result in a performance standard rating of "Unacceptable" in any critical element(s), a reasonable opportunity to demonstrate acceptable performance in such critical element(s) in order to avoid a performance-based reduction in grade or removal. Performance Improvement Plans will specifically include: (1) a description of how the employee's performance falls below the "Minimally Successful" level in the applicable critical element(s); (2) the improvements in performance necessary and information about the performance standards that must be reached in order to be retained, i.e., a minimally successful rating of record; (3) the nature and method of the assistance to be provided; and (4) the duration of the assistance to be provided. The affected employee will be afforded an opportunity to submit suggestions with respect to the assistance to be provided.

(k) "Performance Plan" means all of the written or otherwise recorded, performance elements that set forth expected performance. A plan must include all critical and non-critical elements and their performance standards.

(l) "Performance Rating" means the written, or otherwise recorded, appraisal of performance compared to the performance standard(s) for each critical and non-critical element on which there has been an opportunity to perform for the minimum period. A performance rating may include the assignment of a summary level (as specified in 5 CFR § 430.208(d)).

(m) "Performance Standard" means the management-approved expression of the performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, quality, quantity, timeliness, and manner of performance.

(n) "Performance Standard Rating" means the particular level, established by management, at which an employee demonstrates knowledge,

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skills, and ability in performing the basic requirements of the position, which basic requirements are established by management.

(o) "Progress Review" means communicating with the employee about performance compared to performance standards of critical and non-critical elements.

(p) "Rating of Record" means the performance rating prepared at the end of an appraisal period for performance over the entire period and the assignment of a summary level (as specified in 5 CFR § 430.208(d)). This constitutes the official rating of record referenced in 5 CFR, Part 430.

(q) "Subelements" means those tasks, duties, functions, responsibilities, or work characteristics which have been identified within and together constitute a critical element or non-critical element, but for which performance standard ratings will not be individually assigned.

(r) "Summary Rating" means the written record of the appraisal of each critical and non-critical element and includes the assignment of a performance standard rating to the appropriate elements and a resultant summary rating level in accordance with the summary rating conversion chart. Note that this definition is intended to have the identical meaning as "performance rating" as defined at "(l)" above.

(s) The "Summary Rating Conversion Chart," established by management, describes the manner in which performance standard ratings on each critical and non-critical element are combined to derive a summary rating.

(t) "Unacceptable Performance" means performance of assigned work by an employee which fails to meet the established performance standards above the "Unacceptable" level in one or more critical elements of such employee's position.

(u) *Support Staff only:* "Rating" means the assessment of whether the employee is eligible for a higher graded unit and, as applicable, nonunit position(s), as used, for example, in this Article, Section 19.

Section 2. Critical and Non-critical Elements and Performance Standards.

(a) In the process of identifying the critical and non-critical elements of employees' positions and establishing applicable performance standards, management has considered, and with regard to any future changes shall

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consider, the following as they relate to the accomplishment of the Agency's mission:

(1) The similarities and differences that exist in the tasks, duties, functions, responsibilities and work characteristics of positions at the same grade level in the same job classification throughout the operations of the Agency.

(2) Agency-wide and office practices, procedures, requirements, goals, and objectives.

(b) The critical and non-critical elements identified for employee positions and the applicable performance standards established shall conform with applicable law and government-wide rule and regulation and be:

(1) In writing;

(2) Reviewed and approved by a person at a higher level in the organization than the appraising official;

(3) Consistent with the duties and responsibilities contained in the applicable employee's position description; and

(4) Applied to employees in a fair and equitable manner.

(c) Consistent with 5 U.S.C. § 4302(b), performance standards will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the job in question for each employee or position covered by this Agreement.

Section 3. Appraisal of Employee Performance. (a) An employee will not be adversely appraised regarding a practice, procedure, time goal, objective, or requirement incorporated in the employee's critical and non-critical elements which the employee did not know, or could not reasonably have known existed.

(b) In appraising the performance of an employee in each critical and non-critical element, consideration shall be given to relevant extenuating circumstances, including, but not limited to, large volume of work; staffing problems; unusual case handling mix; travel problems; and bilingual work. For support staff employees, consideration shall also be given to the number and type of employees assigned.

(c) Management shall uniformly utilize performance standard ratings, in accordance with the linkage chart, in determining whether to promote, in accordance with Article 8 (Promotion), Section 2, grant or deny a within-grade salary increase, initiate an adverse action, or otherwise take administrative action against an employee based on performance. In the evaluation and ranking of candidates for competitive positions, management shall rely on the appraisals of candidates, to the extent applicable, in the consideration of the factors set forth in Article 8, Section 7.

Section 4. (a) General. Performance appraisals shall be used to provide employees with information on their performance and how it may be improved and as a basis for decisions to grant awards, grant or withhold pay increases (i.e., within-grade salary increases and quality within-grade salary increases), reassign, promote, train, retain in reduction-in-force, reduce in grade, and remove employees, and *for Support Staff only*, rate employees for competitive unit positions.

The Performance Appraisal System and recommendations for promotion described below are formal steps in the Agency's employment and career development program. In addition to the requirements set forth below, supervisors should continually review the performance of all employees, and shall inform employees within a reasonable time of deficiencies in their work performance, including, but not limited to, deficiencies which:

- (1) May result in a performance-based reassignment; or
- (2) Will result in the employee receiving a rating in any critical element of less than "Fully Successful."

Constructive suggestions for improving performance will be brought to the employee's attention by his or her immediate supervisor(s).

(b) *Progress Reviews.* A progress review shall be held for each employee, normally no earlier than the 6th month but in any event no later than the 8th month of the appraisal period. Progress reviews will be oral. At a minimum, employees shall be informed of their level of performance by comparison with the performance elements and standards established for their positions. It is understood that performance standard ratings given an employee at the end of the appraisal period may not coincide with the assessment given the employee during the progress review. Employees who request an additional appraisal under Section 15 of this Article shall not

receive a progress review during that appraisal period.

(c) *Assistance*. In the event an employee receives an annual or additional appraisal in which he or she receives a rating of less than "Fully Successful" in any critical element, the employee shall be provided assistance in improving performance. Such assistance may include, but is not limited to, formal training, on-the-job training, counseling, and closer supervision.

*Section 5. Performance Improvement Plans.*³⁰

(a) (1) In the event it is determined by the Branch Chief or Regional Director that an employee's performance, if not improved, will result in a decision to take a performance-based adverse action (reduction in grade or removal), such employee will first be provided with a Performance Improvement Plan which provides a reasonable opportunity to demonstrate improved performance. The Performance Improvement Plan will be couched in constructive and ameliorative terms and will indicate, among other things, which aspects of the employee's performance need to improve, to prevent the performance-based adverse action from occurring, and to restore the employee's performance to the "Minimally Successful" level.

(2) Such Performance Improvement Plan will be provided within a reasonable period of time after it is determined that the employee's performance, if not improved, will result in a performance based adverse action (reduction in grade or removal) but before the issuance of a notice of proposed adverse action as set forth in Article 18.

b) The Performance Improvement Plan will be provided to employees in writing.

(c) (1) A decision to provide a Performance Improvement Plan, as well as management's assessment of an employee's performance which results in such a decision, shall not be subject to the grievance procedure, except for an allegation that such decision is in violation of Article 4 (Rights and Obligations of Employees), Sections 1, 2, 5, or 13, or any law affecting conditions of employment. However, when a final assessment of that work and official performance ratings are issued in an appraisal, such appraisal may be grieved in accordance with Section 16 of this Article.

³⁰ This does not apply to employees serving a probationary or administrative trial period (but see Article 17 for employees serving probationary or administrative trial periods).

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(2) Any grievance regarding the substance of the Performance Improvement Plan will be subject to Article 15 (Grievance Procedure) and Article 16 (Arbitration) of this Agreement when the employee receives the Performance Improvement Plan. The date of employee receipt is the date the employee receives the written Performance Improvement Plan. The filing of a grievance regarding the substance of the Performance Improvement Plan does not stay the implementation of the Performance Improvement Plan.

(3) Any grievance regarding the application or duration of the Performance Improvement Plan or the determination regarding the employee's level of performance upon the completion of the Performance Improvement Plan will be subject to Article 15 (Grievance Procedure) and Article 16 (Arbitration) of this Agreement only at the conclusion of the Performance Improvement Plan.

(d) Upon the completion of the Performance Improvement Plan, the employee will receive a performance appraisal. When an employee is given a Performance Improvement Plan which by its terms cannot be completed prior to the end of the employee's appraisal period, the employee will nevertheless be timely appraised unless the employee requests that the appraisal be delayed.

Section 6. Information to be Provided to Employee. (a) Management will ensure that each employee has a copy of his or her current Performance Plan, the Linkage Chart, and the Summary Rating Conversion Chart. Prior to the commencement of each annual appraisal period and as changes occur, the employee's supervisor will meet with the employee to orally review and answer questions regarding the Performance Plan, the Linkage Chart, and the Summary Rating Conversion Chart.

(b) When an employee is detailed or temporarily promoted to another position within the Agency which has critical elements and performance standards different from those applicable to his or her regular position, and the detail or temporary promotion is expected to last 120 days or longer, the Agency will provide written critical elements and performance standards to the employee as soon as possible, but no later than 10 calendar days after the beginning of the detail or temporary promotion if a performance plan already exists for the position, or 30 days if no such performance plan exists. Consistent with 5 CFR § 430.205(d)(1), performance standard ratings on critical elements will be prepared for these details and temporary promotions

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and will be given to the employee and considered in deriving the employee's next rating of record. These ratings shall be communicated to the employee after approval by the final reviewer.

(c) When an employee changes positions during the appraisal period, performance standard ratings on critical and if applicable, non-critical elements, and a summary ratings will be prepared and given to the employee if the employee has served for the minimum appraisal period (90 days) in the position from which he or she changed and that summary rating will be considered in deriving the employee's next rating of record. These ratings will be communicated to the employee after approval by the final reviewer.

Section 7. Timing of Appraisals. All employees will be appraised annually. The appraisal period will normally be one year in length. The appraisal period for all employees will be June 1 through May 31. Appraisals will be finalized and submitted to the appropriate HQ office and the Human Resources Branch by July 15. In no event will employees be evaluated if they have not worked under the applicable critical elements and performance standards for at least 90 calendar days.

When the Agency cannot prepare a rating of record at the time specified in this Agreement, the appraisal period shall be extended for the amount of time necessary to meet the minimum appraisal period at which time a rating of record shall be prepared.

In the first year of this agreement only, the Agency will prepare anniversary-date appraisals for those employees whose annual appraisals are due between the effective date of this agreement and May 31. For those employees, supplemental evaluations will be prepared that appraise the employee's performance for the period beginning on their anniversary date and ending on May 31.

Support Staff only: Further, an employee who is eligible for noncompetitive promotion prior to May 31 (see Article 8 (Promotion), Section 2(c)) shall receive an appraisal and recommendation for or against noncompetitive promotion at least 3 weeks in advance of eligibility so as to permit a decision by the reviewing official(s) prior to the eligibility date for such promotion.

Section 8. Assignment of Ratings of Record. Ratings of record will be reviewed and approved by the Office Head or Regional Director before the appraisal is uploaded into the electronic document storage system and EPF.

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Section 9. Appraisal Information. (a) For appraisal purposes, management will, where appropriate, generate case handling information from the NexGen Case Management System, subject to review by the employee.

(b) At the conclusion of the appraisal period, employees may submit a description of significant Agency work performed during the appraisal period, including work on cases which were not assigned to the employee, and such description shall be considered by management in preparing the appraisal.

(c) Upon request, and consistent with Article 19 (Files), Section 6, in connection with any appraisal described in this Article, the supervisor will conduct an appraisal interview with the employee, which will include a review of the employee's progress, problems encountered, relationship to work of the Agency, proposals for future development, and an assessment of readiness for promotion and estimation of individual potential within the Agency. Such interview will also include, as appropriate, an assessment of the employee's performance under his or her Performance Improvement Plan, as set forth in Section 5 above. Ratings of record may not be communicated to employees prior to approval by the final reviewer.

Section 10. Appraisal Narrative. (a) For those employees who have completed their probationary year or 2-year administrative trial period and whose rating of record is Fully Successful or Commendable, the appraisal narrative for critical elements rated Fully Successful or above need not exceed more than one-half page for each critical element or two pages for the entire appraisal. The narrative will contain general observations about the employee's performance and a conclusionary reference to the applicable performance standard, except that, where appropriate, a description of major successes in particularly significant assignments may be included in the appraisal narrative.

(b) For those employees whose rating of record is Outstanding, the narrative should be more specific and may include examples of work to support the Outstanding rating. However, even in those cases, the narrative need not exceed one page per critical element or three pages altogether.

(c) For those employees who have a summary rating or critical element rating of less than Fully Successful, the narrative will be sufficient to detail the relevant performance deficiencies and assist them in improving their performance.

(d) For those employees who are in a developmental stage, the narrative will be sufficient to enable them to obtain meaningful feedback on their performance and sufficient information to assist them in their career development.

Section 11. Appraisal Provided to Employees. Employees will be provided a copy of their performance appraisal before it is uploaded into the electronic document storage system and EPF.

Section 12. Appraisal Consultation and Comment. Before any appraisal of an employee is uploaded into the electronic document storage system and EPF, but after the rating of record has been assigned, the Branch Chief or Regional Director will give the employee the appraisal containing performance standard ratings, the rating of record, and any appropriate recommendations. The employee may, within 3 days after receiving a copy of the appraisal, notify the Branch Chief or Regional Director that he or she wishes to discuss the appraisal.

The interview should occur in an atmosphere conducive to an open and frank exchange of views with participants showing requisite cordiality and mutual respect.

The Branch Chief or Regional Director may grant on a non-precedential basis an employee's request that a local NLRBU representative be present at the discussion meeting.

If the employee disagrees with the appraisal, he or she may submit, within 10 days, a concise statement of his or her position to the Branch Chief or Regional Director. While it is best practices to first discuss the appraisal with the Reviewing Official, such statement may be submitted whether or not the employee has discussed the appraisal with the Reviewing Official. However, if the employee has discussed the appraisal with the Reviewing Official, the statement will not be due until 10 days after a revised appraisal is given to the employee, or management notifies the employee that the appraisal will remain unchanged, whichever comes first. Such statement will be included with the appraisal materials, made a part thereof and uploaded into the electronic document storage system and EPF.

Employees will be contemporaneously notified in writing when the appraisal is being uploaded into the electronic document storage system and EPF.

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Section 13. Additional Appraisals. (a) In cases where the employee is denied a career ladder promotion when first appraised, he or she may, for any reason, request and will be given one additional appraisal 6 months after the first appraisal at that grade level, such request to be made no later than the end of the 5th month after the last appraisal. Employees may receive only one such 6-month appraisal at any grade level and thereafter will be appraised in accordance with Section 7 of this Article.

(b) Additional appraisals may be given to employees sooner than required by this Article if the Branch Chief or Regional Director concludes that the performance of the employee has changed significantly since the employee was last appraised.

Section 14. Review of Performance Files. When a decision is made at Washington headquarters regarding a personnel matter which involves consideration of an employee's performance or potential, except action taken under Article 12 (Awards) of this Agreement, the relevant contents or copies thereof of the employee's Employee Performance File (EPF) shall be reviewed and fully considered in Washington during the decision-making process.

Section 15. Interim Appraisals. (a) When an employee is transferred from one immediate supervisor to another during an appraisal period, the supervisor from whom the employee is transferred will prepare a written assessment for the period he or she supervised that employee, provided that the period is 90 days or longer.

(b) (1) Written assessment for periods less than 6 months shall not contain performance standard ratings but shall be incorporated at the end of the appraisal year into the employee's annual performance appraisal and shall be fully considered in arriving at the employee's rating of record. Such written assessments need not exceed one page for the entire assessment, provided that the assessment, where appropriate, will include a description of major successes in particularly significant assignments.

(2) Interim appraisals for periods of 6 months or more will contain performance standard ratings on critical elements and, as applicable, non-critical elements, and these ratings shall be communicated to the employee after approval by the final reviewer.

(c) When an employee is supervised by a person other than his or her regular supervisor on a particular assignment of significance, that person will

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be expected to prepare a short written assessment of the performance of the employee for the period in which the assignment occurred. Such written assessment shall contain no reference to a recommended performance standard rating for any critical or non-critical element.

(d) A copy of any such appraisal or assessment referred to in this Section, will be provided to the employee not more than 30 days from the date of transfer or completion of assignment.

(e) All interim appraisals will be uploaded into the electronic document storage system and EPF along with the employee's next periodic appraisal.

Section 16. Grievances on Appraisals. Any appraisal will only be subject to Article 15 (Grievance Procedure) and Article 16 (Arbitration) of this Agreement when an employee receives notice that the appraisal has been uploaded into the electronic document storage system and EPF.³¹

Section 17. Creditable Service for Reduction-in-Force Purposes. In accordance with government-wide rule and regulation applicable at the time of entry into this Agreement and any "National Supplemental Agreement on Reduction-in-Force Procedures" between the parties, each employee's applicable ratings of record on the date of issuance of reduction-in-force notices shall determine his or her entitlement to additional service credit.

Section 18. Privacy of Appraisals. Consistent with privacy considerations, individual employee appraisals (including drafts) will not be kept on shared computer drives where such information is accessible to other staff.

Section 19. Support Staff only: Appraisal Content for Employees at or Above the Full Performance Level. The appraisals of employees at the full performance level or above will include an evaluation of potential for promotion to competitive unit positions.

³¹ The time for filing a grievance over the failure to timely provide an employee with an annual appraisal shall start on July 16, or the first business day thereafter in accordance with the provisions of Article 15 (Grievance Procedure), Section 5. The time for filing a grievance over the failure to provide an employee with an interim appraisal shall start on the 31st day following the date of transfer or completion of assignment. This provision does not affect the right of an employee or the NLRBU to grieve the failure to provide such appraisals.

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Section 20. Support Staff only. Factors for Rating Employees for Higher Graded Competitive Unit Positions. The rating officials shall rate the employee's readiness for higher graded competitive unit positions based on performance appraisals and on the following factors:

Presence of knowledge, skills, and abilities required for the most effective performance of the position for which the employee is being evaluated;

The quality and scope of past and present job experience and performance as it relates to the position for which the employee is being evaluated;

Estimation of individual potential.

ARTICLE 10
POSITION CLASSIFICATION

Section 1. Policies and procedures within the Agency's program for position classification, are subjects for consultation and, where required by law, negotiation, and may be placed on the agenda of the regularly scheduled meetings between the parties. The Agency will continue to solicit the views of the NLRBU concerning classification programs and problems affecting employees.

Section 2. The Agency will furnish current "position description" to new employees and to other employees as official changes occur in their classification status. In addition, upon request, employees will be given a copy of their current position description. The Agency will also provide the NLRBU with a copy of any revised "position descriptions" on a current basis.

Section 3. Copies of all position classification standards and other evaluation material pertinent to positions of employees in the unit will be made available for review by the NLRBU. In the event of any studies affected prior to establishing new, or changing the current status of, positions in the unit, the NLRBU will be provided sufficient evaluation material so as to enable the parties to consult and, where required, negotiate effectively on the proposed changes.

Section 4. Classification Appeals. (a) Agency Procedure. Any employee may seek review of his or her classification by filing an appeal with the Director of Human Resources. Such employee may, in accordance with 5 CFR § 511.608, select a representative of his or her choice to assist in the preparation of an appeal. The Agency may disallow an employee's representative when the individual's activities as a representative would cause a conflict of interest or position, when the individual is an employee who cannot be released from his or her official duties because of the priority needs of the Government, or when the individual is an employee whose release would give rise to unreasonable costs to the Government. A classification appeal shall be in writing, using as a basis for the appeal the present position description involved. The appeal will specifically indicate those items in the position description which are claimed to not accurately describe the duties currently performed. Such appeal shall normally be answered by the Agency within 45 working days after receipt by the Director of Human Resources.

(b) *Appeals to OPM.* Pursuant to 5 CFR Part 511, Subpart F, an employee in the General Schedule or the employee's designated representative acting on behalf of an employee may file a classification appeal with the Office of Personnel Management in accordance with OPM rules and regulations.

(c) *Other Review Procedures.* Certain other issues set forth at 5 CFR § 511.607 which are not appealable to OPM in the first instance may be reviewed under the negotiated grievance procedure. However, consistent with 5 U.S.C. § 7121 and Article 15 (Grievance Procedure) of this Agreement, the classification of any position which does not result in the reduction in grade or pay of an employee is not grievable.

Section 5. The NLRBU will be notified of management-initiated audits of unit positions. The NLRBU shall, to the extent permitted by law, be notified of employee classification appeals.

Section 6. New or revised unit position descriptions will be furnished to the NLRBU in time for the parties to consult and, where required by law, negotiate regarding their application, before such position descriptions are put into effect.³² However, the provisions of this Section will not operate to delay the appointment of new employees to new positions or the promotion or reassignment of employees to new positions.

³² It is understood that the provisions of this Section are not intended to interfere with management's right to assign work to employees retained under 5 U.S.C. §7106(a)(2)(A), Article 3 (Management Rights and Obligations), Section 2 of this Agreement, or other provisions of this Agreement.

ARTICLE 11 EXCHANGE PROGRAM

Section 1. Consistent with budgetary and staffing considerations, 36 Exchange Program assignments will be offered to employees during each fiscal year of this Agreement. Of these slots, 21 will be reserved for field office professionals; 11 will be reserved for field office support staff; 2 will be reserved for GC-side headquarters support staff; and 2 will be reserved for Board-side support staff. The program provides employees an opportunity to learn about Agency work that is performed in offices other than the employee's duty station. The goal of the program is to train employees in the overall mission of the Agency and provide career development.

Section 2. (a) The availability of program assignments under this Article will be communicated to employees electronically by annual notice. Those employees who desire to participate in a program assignment must respond by e-mail message to the Agency's designated program administrator, with a copy to the Office Head, Branch Chief, or Regional Director.

(b) Eligibility.

(1) Professionals. To be eligible for an exchange assignment, a field office professional employee must: (A) have served with the Agency a minimum of 30 months; (B) be at least a GS-12 Field Examiner or GS-13 Field Attorney; and (C) have performance standard ratings of at least "Fully Successful" in all critical elements as reflected by his or her last appraisal which resulted in a rating of record.

(2) Support Staff. To be eligible for an exchange assignment, a support staff employee must: (A) have served with the Agency a minimum of 30 months; (B) be at least a GS-5 employee; and (C) have performance ratings of at least "Fully Successful" in all critical elements as reflected by his or her last appraisal which resulted in a rating of record.

Section 3. In the course of selecting employees, the General Counsel [Board] will balance the needs of the entire Office of the General Counsel [Board] and will select employees on the following basis:

- (a) Estimation of individual potential;
- (b) Past and present job performance;

- (c) Relevant individual skills;
- (d) Length of Agency service; and
- (e) Length of time an employee has waited to participate in the program.

Section 4. All applicants for the program will be notified upon approval of the Agency's Operating Plan or December 15, whichever occurs first, as to who was selected and if selected, the approximate time when they will be participating in the program.

Section 5. (a) Length of a program assignment will normally be 4 weeks for professionals and 1 or 2 weeks for support staff employees.

b) Employees may participate in the Exchange Program no more frequently than once every 5 years.

(c) Employees participating in the Exchange Program will be provided information on lodging and travel.

ARTICLE 12
INCENTIVE AND PERFORMANCE AWARDS

Section 1. General. Consistent with applicable law, government-wide rule and regulation, budgetary considerations, and this Agreement, the Agency shall continue to encourage all employees to share actively in improving Government operations and shall recognize and reward employees to maintain and increase productivity in accomplishing the mission of the Agency; by rewarding employees whose accomplishments and quality of performance benefit the Agency and federal government; to improve government and Agency operations and services and further the Agency's ability to accomplish its mission. The Agency shall appropriately and promptly reward employees for their contributions and performance.

Section 2. Types of Awards.

(a) Incentive Awards.

(1) Employee contributions such as meritorious suggestions, special acts or services, and other superior accomplishments may be recognized and rewarded with an incentive award consisting of cash or time-off. Such awards are not dependent upon any certain performance standard ratings except for bilingual awards as set forth in Section 2(a)(6).

(2) Funds for cash incentive awards, including awards for special acts or services, meritorious suggestions, and other superior accomplishments shall be separate from the performance awards fund.

(3) Time off from work without charge to leave or loss of pay may be granted to an employee in recognition of superior accomplishments or other personal effort that contributes to the quality, efficiency, or economy of Agency operations. Time-off awards of 8 hours or less may be given as "On-the-Spot" awards to recognize quickly one-time and short-term efforts by employees.

(4) Incentive awards may be granted alone or in addition to a performance award (including a quality step increase).

(5) As part of the Agency's Employee Recognition Program under this Section, any employee or the NLRBU, or any of its local unions,

may nominate, in writing, employee(s) for such awards through the appropriate supervisory channels.

(b) Bilingual Awards.

(1) Employees who, on a regular basis rather than occasionally: (A) utilize their bilingual³³ skills performing the work of the Agency; (B) whose performance is currently rated at least Fully Successful; and (C) who are not otherwise compensated for the use of these skills for a particular period (through salary, or another type of incentive award based solely on their use of bilingual skills) may be considered for a special act incentive award ("bilingual award"). In addition, employees who receive bilingual awards will receive a certificate of commendation from the General Counsel or Chairman, as applicable.

(2) In making nominations for, or decisions to grant, bilingual awards the nominating and deciding officials shall take due account of contributions by support staff employees.

(3) The nomination period for bilingual awards will begin on June 15 of each year and shall be publicized by the Agency in a GC-wide memorandum. Nominations for bilingual awards shall be submitted to the Office Head³⁴ by July 15 of each year and the Office Head shall forward approved nominations to the Division of Operations-Management or Human Resources Branch, as applicable, no later than August 1 of the same year.

(4) Receipt of a bilingual award shall not preclude the employee from receiving other benefits and or awards to the full extent allowed under the contract.

³³ "Bilingual" means any second language including sign language.

³⁴ In the field, "Office Head" refers to the Regional Director. In Headquarters, "Office Head" refers to the Division Head, Branch Chief, Board Member, Board Member's Chief Counsel, Chief Administrative Law Judge, Associate Chief Administrative Law Judge, or their designees, as applicable.

(5) Bilingual awards shall be in the following amounts:

Date of Award	Level 1	Level 2	Level 3
August 2013	\$175	\$350	\$525
August 2014	\$200	\$400	\$600
August 2015 and thereafter.	\$225	\$450	\$675

(c) Performance Awards.

(1) Employees with performance standard ratings of “Fully Successful” or higher in all critical elements are eligible for a performance award. To be eligible for a quality step increase, employees must have a rating of record of “Outstanding.”

(2) Performance awards shall be based upon an employee’s rating of record. Performance award amounts will be in accordance with the scale set forth in the appendix to this article.

(3) There will be a common annual awards date of August 15 for all unit employees. Management will initiate all performance award and Quality Step Increase actions into the payroll system (FPPS or its successor) by August 15.

(d) Honorary Awards. (1) Honorary awards provide the Board and General Counsel an opportunity to recognize employees who have achieved the very highest standards of excellence. These prestigious awards represent the very highest level of recognition the Agency offers. Each recipient or group will receive an engraved plaque or other award trophy at an awards ceremony. Recipients will be announced in the Agency’s newsletter, and their names will be posted on the Agency’s intranet site for one year.

(2) Nomination Procedure and Selection. Any employee may nominate someone other than themselves for any Honorary Award. However, all Honorary Awards must receive the concurrence of the nominee’s Chief Counsel, Deputy Chief Counsel, Division Head, Office Director, Assistant General Counsel (Division of Operations-Management) or Branch Chief, as applicable, prior to being submitted and considered. In order to be considered, nominations must be submitted in writing to the Honorary Awards Review Committee on the Honorary Award Nomination Form, NLRB Form 4005, by no later than April 30. The Committee will take an

Agency-wide perspective in evaluating nominees and render recommendations by consensus. The Committee's evaluation criteria will be broadly based on the descriptions indicated below as well as any additional criteria established by and agreed upon by the Committee. Any additional criteria will be communicated to all Agency employees before the start of the award cycle in which they will apply. In order to preserve the prestige of these Honorary Awards, normally no more than one Agency employee or group will be selected for each award category in each award cycle and an award for each category may not necessarily be given in each award cycle. The Committee's recommendations will be submitted to the Chairman and General Counsel or designees who will select the recipients.

(3) Titles of Honorary Awards. The following are the titles of Agency Honorary Awards under this Section:

- ***Gerald Brown Award*** is presented to the outstanding field examiner. Nominees for this award must be Labor-Management Relations Examiners and have demonstrated sustained excellence in the accomplishment of their duties and significantly contributed to the quality and effectiveness of the Agency's mission.
- ***Norton J. Come Award*** is presented to the attorney who best exemplifies the Agency's standards of legal excellence. Attorneys nominated for this award must have demonstrated sustained excellence in legal casework, including legal research, analysis, or advice, and have contributed significantly to the accomplishment of the Agency's legal mission.
- ***Excellence in Customer Service*** recognizes an employee who has demonstrated exceptional customer service on a sustained basis to internal NLRB customers. This award recognizes an employee who goes the extra mile to meet customers' needs, is responsive, timely, courteous, and resourceful.
- ***Excellence in Innovation*** recognizes the suggestion, planning, development, or implementation of an innovation (either program or administrative) that has substantially contributed to the efficiency and effectiveness of the Agency. This innovation must have made a process or practice easier and have resulted in an overall increase in efficiency, rather than shifting work from one element to another.

- ***Excellence in Leadership*** recognizes a non-supervisory employee who best exemplifies excellence in leadership. Nominees should demonstrate the ability to advance the core values and principles of the Agency by motivating people to deliver consistently high quality outcomes.
- ***Excellence in Mentoring*** is presented to the employee who has demonstrated sustained excellence in mentoring fellow employees. This award recognizes an employee who goes the extra mile to reach out to, support, encourage, and mentor NLRB employees.
- ***Excellence in Outreach*** is presented to the employee who has supported significant and/or innovative outreach to the community to ensure that the public is aware of the mission and jurisdiction of the Agency.
- ***Excellence in Professional Administrative Support*** recognizes a member of the support staff who has demonstrated sustained high quality and productivity and commitment to the Agency's mission. This award is reserved for employees in the professional administrative support fields such as office managers, assistant office managers, secretarial assistants, legal assistants, public inquiry assistants, special assistants, and secretaries.
- ***Presidential Award*** is granted to an employee who contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork by a suggestion, invention or other personal effort or performs an exceptional meritorious special act or service in the public interest in connection with or related to official employment. A Presidential Award may be in addition to an agency award. The Office of Personnel Management will determine if the award is merited. (The Presidential Award is different than the Presidential Rank Award which is not governed by this Chapter.)

(4) ***Presentation of Honorary Awards.*** The Chairman and General Counsel will present Honorary Awards during an awards ceremony.

Section 3. (a) It shall be the responsibility of management to continuously be aware of employee contributions and/or performance, and whether based on such contributions and/or performance an employee is eligible for an incentive or performance award.

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(b) (1) Whenever management identifies employees or groups of employees whose contributions and/or performance merit an incentive award, it shall, as expeditiously as possible, make a determination as to whether to recommend the employee(s) for an appropriate award.

(2) When an Office Head executes a written determination that an employee has been granted a performance award based on his or her performance and current rating of record, the Office Head shall forward the determination to the Division of Operations-Management or the Human Resources Branch (as applicable) and simultaneously advise the employee. As noted in Section 2(b)(3) of this Article, the performance award is effective as of August 15.

(c) Recommendations for incentive and/or performance awards will be granted or denied within a reasonable period of time after a fully supported recommendation has been submitted to the approving official. The Agency will advise the employee within a reasonable period of time of final action with regard to his or her award recommendation.

Section 4. In recognition of the Agency's policy to encourage the successful settlement of cases, an employee's extraordinary and outstanding case settlement record may serve as a factor in support of a nomination or recommendation for an incentive award.

Section 5. The names of employee recipients of incentive awards including bilingual awards, and performance awards including quality within-grade increases, will be periodically published in the Agency newsletter or other writing.

Section 6. The Agency will provide the NLRBU with a monthly report of performance awards, including quality step increases, and incentive awards including bilingual awards granted to employees. The Agency will provide the NLRBU with a report of recipients of Honorary Awards consistent with Section 2(c) above.

Section 7. The NLRBU will appoint its own representative or an alternate to serve on the Incentive Awards Committee, which representative will be on official time.

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Section 8. The NLRBU will appoint its own representative or an alternate to serve on an Employee Recognition Program Advisory Committee covering field office unit employees, which representative will be on official time.

Section 9. If the Agency curtails or limits cash awards because of budgetary considerations in accordance with Article 3, the following will apply:

(a) Employees will receive time-off awards during the period when cash awards are not being paid.

(1) If the Agency determines to grant time-off awards to all bargaining unit employees rated Fully Successful or above, the following time-off awards scale will be in effect:

- (A) Fully Successful: 11 hours.
- (B) Commendable: 22 hours.
- (C) Outstanding: 34 hours.

(2) If the Agency determines to grant time-off awards, but only to employees who were approved for a cash award, the following time-off awards scale will be in effect:

- (A) Fully Successful: 39 hours.
- (B) Commendable: 43 hours.
- (C) Outstanding: 51 hours.

(b) Employees approved for Bilingual Awards will receive the following time-off awards:

Year	Level	Support Staff	Professional Staff
August 2013	Level 1	6 hours	3 hours
	Level 2	12 hours	6 hours
	Level 3	18 hours	9 hours
August 2014	Level 1	7 hours	3.5 hours
	Level 2	14 hours	7 hours
	Level 3	21 hours	11.5 hours
August 2015	Level 1	8 hours	4 hours
(and beyond)	Level 2	16 hours	8 hours
	Level 3	24 hours	12 hours

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(c) The time-off awards in Subsections (a) and (b) shall be in addition to any time-off awards (such as on-the-spot or recognition time-off awards).

(d) If, in any fiscal year, there are insufficient funds to provide bargaining unit cash performance awards in the amounts set forth in Section 2(a)(6)(E) and/or Section 2(b)(2) of this Article because the total amount of all Agency performance awards (bargaining unit performance awards and non-bargaining unit performance awards) would exceed the total remaining Agency awards budget, the Agency will reduce the bargaining unit performance 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.³⁵ If management determines that there will be no reduction to non-bargaining unit performance awards, then there will be no reduction to bargaining unit performance awards. In the event of a partial reduction in the amount of cash awards, the time-off awards surrogate is reduced by an inverse percentage (i.e., 100% reduced by the percentage reduction applied to the cash awards), with the resulting time-off award rounded to the nearest quarter-hour.

(e) The parties agree that management may deny requests to use time-off awards issued pursuant to Section 9(b) if the time that the employee requests off would interfere with operating needs. In such cases, the employee may request that the time-off award be used at another time.

(1) If denial of an employee's request to use a time-off award granted pursuant to Section 9(b) would foreseeably result in forfeiture of the award, the employee should notify management of the potential for forfeiture. Employee requests to use time-off awards granted pursuant to Section 9(b) will not be denied, if denial will result in forfeiture of the award, without just cause. Further, management will make every effort to permit the employee to use the time-off award to avoid forfeiture.

³⁵ 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 Agency will reduce all performance awards to 80% ($100,000/125,000$). Therefore, every performance award amount will be multiplied by 80%. Separate calculations may be performed with respect to Bilingual Awards and Performance Awards – i.e., if the Agency's awards budget as a whole imposes different reductions for Bilingual and Performance Awards, those separate percentage adjustments will be applied respectively to Bilingual and Performance Awards granted under this Article.

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APPENDIX
AWARD SCALES

Fully Successful Commendable Outstanding

GS-1	\$465	\$480	\$494
GS-2	\$480	\$494	\$510
GS-3	\$494	\$510	\$572
GS-4	\$510	\$572	\$640
GS-5	\$572	\$640	\$713
GS-6	\$640	\$713	\$793
GS-7	\$713	\$793	\$878
GS-8	\$793	\$878	\$969
GS-9	\$878	\$969	\$1,068
GS-10	\$969	\$1,068	\$1,173
GS-11	\$1,068	\$1,173	\$1,406
GS-12	\$1,173	\$1,406	\$1,672
GS-13	\$1,406	\$1,672	\$1,976
GS-14	\$1,672	\$1,976	\$2,325

**ARTICLE 13
WITHIN-GRADE INCREASES**

Section 1. An employee whose work is of an acceptable level of competence ("Fully Successful" rating of record) shall receive within-grade increases effective the minimum time permitted by law or government-wide regulation.

Section 2. Determination to Grant or Withhold Within-Grade Increases. (a) The Agency will, on or before the date an employee is eligible to receive a within-grade step increase, make a determination regarding granting or withholding the within-grade increase. If the determination is that the within-grade increase should be granted, it shall be made effective on the eligibility date. If the determination is made that the within-grade increase should not be granted, such negative determination shall be communicated, in writing, to the employee and to the Human Resources Branch as soon as possible after the completion of the waiting period and shall:

- (1) Set forth the reasons for the negative determination and the respects in which the employee must improve his or her performance in order to be granted a within-grade increase;
- (2) Inform the employee of his or her right to request that the appropriately designated Agency official reconsider the determination; and
- (3) Inform the employee of his or her right to official time under Subsection 3(d) below.

(b) The reasons set forth for the negative determination must be specific and include the specific instances of "Unacceptable" or "Minimally Successful" performance during the appraisal period upon which the Agency relies in its negative determination. The Agency may not thereafter rely upon any reason or instance not specified in the negative determination with respect to the denial of a within-grade increase.

(c) If an employee chooses not to file a request for reconsideration as described below, he or she may file a grievance within 15 working days of receipt of the determination notice.

Section 3. Reconsideration of Negative Determination. (a) An employee, or an employee's representative, may request reconsideration of a negative

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determination by filing with the [GC CBA: Associate General Counsel, Division of Operations-Management in the case of field employees and Division Head in the case of headquarters employees] [Board CBA: Board Member, Chief Counsel or Office or Division Head], not more than 15 calendar days after receiving notice of the same, a written response to the negative determination setting forth the reasons why the Agency shall reconsider the determination.

(b) When an employee files a request for reconsideration, the Agency shall establish an employee reconsideration file, which shall contain all pertinent documents relating to the negative determination and the request for reconsideration, including copies of the following:

- (1) The written negative determination and the basis therefore;
- (2) The employee's written request for reconsideration;
- (3) The report of investigation when an investigation is made;
- (4) The written summary or transcript of any personal presentation made; and
- (5) The Agency's decision on the request for reconsideration.

(c) The file shall not contain any document that has not been made available to the employee or his or her personal representative. An opportunity will be provided for the employee to submit a written exception to any summary prepared by the Agency of the employee's personal presentation.

(d) An employee in a duty status shall be granted a reasonable amount of official time, in accordance with Article 28 (Official Time), to review the material relied upon to support the negative determination and to prepare a response to the determination.

(e) The Agency shall provide the employee with a prompt written final decision.

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(f) When a negative determination is sustained after reconsideration, the employee shall be informed in writing of the reasons for the decision and of his or her right to appeal the decision by filing a grievance within 15 working days of receipt of the final decision.

(g) When a negative determination is reversed after reconsideration, the employee shall receive his or her within-grade increase effective the date he or she was eligible to have received it as if the negative determination had not issued.

Section 4. If, after having been denied a within-grade increase pursuant to the foregoing provisions of this Article, an employee demonstrates sustained performance at an acceptable level of competence ("Fully Successful" rating of record), he or she shall receive a within-grade increase effective the first day of the first pay period after the acceptable determination has been made.

ARTICLE 14
LEAVE

Section 1. General. (a) Employees have the right to accrue annual, sick, and compensatory leave in accordance with government-wide rule and regulation and Agency policy. Employees are entitled to reasonable opportunity to take leave consistent with the operating needs of the office.

(b) Requests for use of annual leave, compensatory leave, and sick leave shall not be denied without just cause. Such leave may be taken in 1/4 hour increments.

(c) Requests for leave without pay shall not be arbitrarily or unreasonably denied. However, absent compelling circumstances, requests for leave without pay to regularly alter an employee's compressed work schedule will not be approved. Such leave may be taken in 1/4 hour increments.

(d) Requests for and approval of leave under this Article will be consistent with the provisions of the Family and Medical Leave Act.

Section 2. Advance Sick Leave and Annual Leave. (a) The Agency will give full consideration to employee requests for advance of sick leave in cases of serious illness, disability, pregnancy, or care of dependents, in keeping with the criteria and procedures of applicable regulations. The status of accrued annual or compensatory leave shall not be a bar to the granting of advance sick leave. In no case will the total amount of sick leave advanced to any employee exceed 240 hours. Full-time employees will be able to use sick leave each year for family care or bereavement purposes pursuant to the Federal Employees' Family Friendly Leave Act, as set forth in AB 95-15 (December 20, 1994) additionally as set forth in APC 06-01, APC 09-01 and APC 08-05 as modified by APC 09-01.

(b) Annual leave that would be accrued during the applicable leave year may be granted for the purposes of Section 3, and will be recorded in accordance with the Administrative Policies and Procedure Manual.

Section 3. Family and Medical Leave. (a) Reasonable amounts of leave to fulfill parental responsibilities and dependent care responsibilities will be granted to employees. Parental responsibilities include care for, or assisting in the care of, a spouse for pregnancy-related disability or incapacitation, or caring for newborn or newly adopted or foster children. Dependent care

responsibilities include care of elderly or infirm parents. Dependent care responsibilities also include care of other dependents of employees, including family members related by blood or affinity who have a serious health condition.

(b) Annual leave, compensatory leave, sick leave where appropriate, and reasonable amounts of leave without pay up to 6 months will be granted for parenting and dependent care purposes. The special needs of the employee and the needs of the employing unit will be considered in any request for an extension of leave beyond the 6-month period. The total grant of leave for these purposes will not exceed 1 year.

(c) Requests for leave for maternity reasons, up to 6 months, will be granted. The special needs of the employee and the needs of the employing unit will be considered in any request for extension of leave beyond the 6-month period. The total grant of leave for this purpose will not exceed 1 year.

(d) An eligible employee may take up to 6 months leave under Section 3(c) and may take up to 6 months leave under Section 3(b) related to the same set of circumstances, and any extension under 3(b) or 3(c) is subject to operating needs. It is understood that an employee who first takes leave under 3(c) and is denied an extension because of operating needs, may then request leave under 3(b).

Section 4. Leave for Weather and Other Emergencies. When severe weather emergencies, general transportation emergencies, other emergencies such as bomb threats, floods, earthquakes, tornadoes, fires, explosions, or natural catastrophes occur within the commuting area, or when a major disaster declaration in the commuting area is requested pursuant to 42 U.S.C. 5191 or 44 C.F.R. 206.36, which prevent employees from getting to or from work, then the Office Head³⁶ may exercise discretion to grant administrative or other leave to employees.

In areas where OPM directives are promulgated, they will be followed. In areas where there is no OPM guidance or where it accords discretion to the Agency, the Office Head will give consideration to local FEB guidance, if any, in exercising the discretion to grant administrative leave or other leave

³⁶ "Office Head" means Regional Director, Division Head, Branch Chief, Board Member or Board Member's Chief Counsel, Chief or the Associate Chief ALJ, and their designee.

to employees.³⁷ If no OPM or FEB guidance is available, the Office Head will exercise discretion to grant administrative or other leave to employees.

Section 5. Civic and Humanitarian Responsibilities. An employee fulfilling civic or humanitarian duties, such as donating blood, bone marrow, or an organ, voting, and serving jury duty, will be authorized leave or excused absence, as appropriate, under government-wide rule and regulation and Agency policies.

Section 6. Career Education Leave. (a) Consistent with operating needs, leave without pay for up to 1 year for career educational purposes will be considered for employees with a current rating of record of at least "Fully Successful," who are not on a Performance Improvement Plan and who have at least 5 years of Agency service. The course of study, research, or teaching position to be pursued should be designed to improve the job skills of the employee, be in line with the type of work performed by the Agency, and contribute to the Agency's mission. Any teaching position obtained pursuant to this Section will be subject to the Agency's outside employment policies and procedures.

(b) The leave under this Section may be limited to five employees at any one time. If more than five employees request such leave, length of Agency service will be used to determine selection.

Section 7. Compensatory Time-Off for Religious Observances. Employees are entitled to compensatory time off for religious observations in accordance with Article 21, Hours of Work, Section 1 (j) (2).

Section 8. Request for Review. The NLRBU may, on behalf of an employee, request review of any adverse decision made pursuant to this Article. Such request for review must be made within 10 days of receipt by the employee of the notice of the decision.

Section 9. Opportunity to Improve Attendance. In the event it is determined by the Agency: (1) that an employee's attendance record is unsatisfactory; and (2) that if the employee's attendance record does not improve within a reasonable period of time he/she would be placed on a Leave Restriction Plan, the Agency will notify the employee that his/her attendance record is unsatisfactory and provide him/her with a reasonable opportunity to improve

³⁷ If the Office Head decides, in the exercise of his or her discretion, to follow FEB guidance, such decision shall be deemed an appropriate exercise of discretion.

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so that no Leave Restriction Plan is needed. The Agency will inform the employee of what aspects of the employee's attendance record is unsatisfactory and what needs to be done to avoid being placed on a Leave Restriction Plan. As part of this process, the Agency will give the employee the opportunity to explain why attendance has been unsatisfactory.

ARTICLE 15
GRIEVANCE PROCEDURE

Section 1. In the interest of harmonious and effective performance of the Agency's mission, the Agency and the NLRBU recognize the importance of prompt and equitable disposition of any grievance at the lowest organizational level possible under procedures of maximum informality and flexibility. The NLRBU or any employee(s) or the Agency shall have the right to present a grievance and have it promptly considered on its merits. The initiation of a grievance by an employee shall not cast any adverse reflection on his or her standing in the Agency.

Section 2. A grievance is defined as any complaint:

- (a) By any employee concerning any matter relating to the employment of the employee;
- (b) By the NLRBU concerning any matter relating to the employment of any employee; or
- (c) By any employee, the NLRBU, or the Agency concerning—
 - (1) the effect or interpretation, or a claim of breach, of this Agreement; or
 - (2) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions or employment.

The foregoing shall have the identical meaning as 5 U.S.C § 7103 (a)(9).

However, the grievance procedure contained herein shall not apply with respect to any grievance concerning:³⁸

- (1) Any claimed violating of Subchapter III of 5 U.S.C. Chapter 73 (relating to prohibited political activities);

³⁸ The grievance procedure shall also not apply to: (1) any matter the grievability of which is specifically excluded by this Agreement, including but not limited to certain matters pertaining to employees during their probationary year or administrative trial period as set forth in Article 17, Section 2; or (2) a grievance alleging a violation of provisions of a local understanding which has not been approved under the provisions of Article 26 and which is not otherwise cognizable under the terms of this Agreement.

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- (2) Retirement, life insurance, or health insurance;
- (3) A suspension or removal under 5 U.S.C. Section 7532 (relating to actions in the interests of national security);
- (4) Any examination, certification, or appointment;
- (5) The classification of any position which does not result in the reduction in grade or pay of an employee.

Section 3. (a) The grieving party may be an employee, the NLRBU, or the Agency. Any employee or group of employees may present such grievances to the Agency and have them adjusted, without the intervention of the NLRBU, as long as the adjustment is not inconsistent with the terms of this Agreement and the NLRBU has been given an opportunity to be present at the adjustment and/or discussions leading up to such adjustment. Employees may not be represented in the processing of a grievance by a representative other than the NLRBU. An employee or group of employees grieving without intervention of the NLRBU must follow the negotiated grievance procedure.

(b) Upon the filing of a grievance wherein an employee does not designate the NLRBU as his or her representative, the Agency shall furnish the Local union president (or at Step Three, the NLRBU Grievance Committee Chair) with a copy of the grievances filed and answers issued at each step.³⁹

Section 4. Employees should be aware that under the Civil Service Reform Act other procedures may exist in lieu of, or in addition to, the following procedures for dispute resolution. Except as provided by the Civil Service Reform Act and other law and regulation, the grievance procedure shall be the exclusive procedure available to the NLRBU, the Agency, and employees for resolving all grievances.

The foregoing shall have the identical meaning as the Civil Service Reform Act, as interpreted by the Federal Labor Relations Authority and the courts.

³⁹ Such documents will also be filed in the NLRBU -- Step 3 Answers Outlook Mailbox as described in footnote 46 below.

Section 5. The grievance procedure shall consist of the following steps for those grievances filed against the Agency:

Step One. Any grievant may refer a grievance to the NLRBU if he or she desires. If any grievance is filed, the grievant and/or his or her representative must, in situations where it is appropriate to present the grievance at Step One in accordance with Section 8 of this Article, present the grievance to the grievant's immediate supervisor and attempt to resolve it at this level. The grievance must be submitted to the immediate supervisor, either personally or via electronic transmission, within 15 working days following the date on which the aggrieved employee or a union officer had knowledge, or reasonably should have had knowledge, of the facts giving rise to the grievance. The grievance answer will be issued by the supervisor within 5 working days following the day on which the grievance was received. Step One grievances and answers may be oral or written.

Step Two. Absent resolution of the grievance at Step One, the grievant and/or his or her representative may present the grievance at Step Two. The Step Two grievance must be in writing and signed by the grievant and/or his or her representative,⁴⁰ and submitted to the appropriate Step Two management official,⁴¹ either personally or via electronic transmission,

⁴⁰ In all grievances filed pursuant to the provisions of this article, the signature requirement will be deemed met if transmitted from an email account of the person or organization that filed the appeal.

⁴¹ In this Article, the term "appropriate Step Two management official" shall include but not be limited to:

- Associate Chief Administrative Law Judges [Board contract only]
- Director, Office of Public Affairs [Board contract only]
- Solicitor [Board contract only]
- Director, Office of Representation Appeals [Board contract only]
- Associate Chief Information Officer [Board contract only]
- Supervisory Editor, Editorial and Publications Services Section [Board contract only]
- Deputy Executive Secretary [Board contract only]
- Regional Director [GC contract only]
- Chief, Library and Administrative Services Branch [GC contract only]
- Chief, Facilities and Property Branch [GC contract only]
- Chief, Acquisitions Management Branch [GC contract only]
- Chief, Finance Branch [GC contract only]
- Assistant General Counsel, Injunction Litigation Branch [GC contract only]
- Assistant General Counsel, Regional Advice Branch [GC contract only]
- Assistant General Counsel, Legal Research Branch [GC contract only]
- Deputy Associate General Counsel, Appellate and Supreme Court Litigation Branch [GC contract only]

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within 15 working days of the issuance of the Step One answer. The Step Two answer will be issued in writing, within 10 working days following the day on which the Step Two grievance was received.

This submission to the appropriate Step Two management official shall include:

- (a) Name of grievant;
- (b) Nature of grievance and specific contract provision(s) allegedly violated;
- (c) Corrective action requested and reasons for such action; and
- (d) Name of designated representative, if any.

Upon request of the appropriate Step Two management official the grievant or his or her representative shall provide any of the above-listed items not contained in the original grievance submission. Failure to comply with any of the items, (a) through (d) above shall not preclude processing the grievance.

Step Three. Absent resolution of the grievance at Step Two, the grievant and/or his or her representative may present the grievance at Step Three. It shall⁴² be accompanied by the Step Two grievance, the Step Two answer, and any attachments to either. The Step Three grievance must be in writing, signed⁴³ by the grievant and/or his or her representative and submitted to the

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- Assistant General Counsel, Contempt Litigation and Compliance Branch [GC contract only]
 - Assistant General Counsel, Special Litigation Branch [GC contract only]
 - Director, Office of Appeals [GC contract only]
 - Chief, Litigation Service Section [GC contract only]
 - Chief of Staff to the Chairman [Board contract only]

⁴² The failure to include the Step 2 grievance, Step 2 answer, and any attachments shall not render the grievance procedurally defective.

⁴³ The signature requirement will be deemed met if transmitted from an email account of the person or organization that files the step 3 appeal.

appropriate Step Three management official⁴⁴ and the Assistant General Counsel for Labor and Employee Relations, either personally or via electronic transmission, within 25 working days of the issuance of the Step Two answer. A copy of the Step Three grievance must be served simultaneously on the appropriate Step Two management official. The party filing the grievance will assign it a short title succinctly describing the dispute.⁴⁵ Consistent with current practice, the Step Three grievance will be assigned a number by the Agency, which will be set forth in an acknowledgement memo to the Union. The parties will use this number and title in the future correspondence. The Step Three answer will be issued by the Associate General Counsel or Board Member Chief Counsel, as applicable, such answer to contain the written concurrence of the General Counsel or Board Member, as applicable, within 25 working days after receipt of the Step Three grievance.

The Step Three answer will be in .pdf form and served by e-mail. The subject line of the e-mail message transmitting the Step Three answer will include the title and the number of the grievant assigned by management. The Step Three answer will be served on the individual or Union representative who filed the Step Three grievance with a copy to the NLRBU Grievance Committee Chair and NLRBU– Step Answers Outlook Mailbox.⁴⁶

The national parties, by mutual agreement, may remand a Step Three grievance to Step Two. The national parties will establish a deadline for resolution by the local parties. If the grievance is not resolved by the local

⁴⁴ In this Article, the term “appropriate Step Three management official” shall include, but not be limited to: Associate General Counsel, Division of Enforcement Litigation [GC contract only]

- Associate General Counsel, Division of Advice [GC contract only]
- Associate General Counsel, Division of Operations Management [GC contract only]
- Director of Administration [GC contract only]
- Chairman and Board Members [Board contract only]
- Executive Secretary [Board contract only]
- Chief Administrative Law Judge [Board contract only]
- Chief Information Officer [Board contract only]

⁴⁵ Failure to properly title the grievance shall not render it procedurally defective. In such cases the Agency will provide a title.

⁴⁶ The NLRBU Step 3 Answers Outlook Mailbox will be established on or before the date this agreement is signed. The mailbox will permit access to step 3 answers solely by the NLRBU Executive Committee. If it is no longer possible to maintain such a mailbox in its present form, the Employer will resume its current practice of serving step 3 answers on all members of the NLRBU Executive Committee and to the applicable District Vice President.

parties on remand, the grievance will revert to Step Three and the time limits for processing it at Step Three will be reset.

Section 6. The grievance procedure shall consist of the following steps for those grievances initiated by local Agency management against a Local of the NLRBU:

Step One. The appropriate Step One management official (as defined in footnote 4 above) or the Assistant General Counsel for Labor and Employee Relations may present the grievance to the Local Union President. The grievance must be in writing, signed by the appropriate Step Two management official, or the Assistant General Counsel for Labor and Employee Relations, and submitted to the Local Union President, either personally or via electronic transmission, within 15 working days following the date on which the Agency had knowledge, or reasonably should have had knowledge, or the facts giving rise to the grievance.

This submission to the Local Union President shall include:

- (a) Nature of grievance and specific contract provision(s) allegedly violated; and
- (b) Corrective action requested and reasons for such action.

Upon request of the Local Union President, management shall provide any of the above-listed items not contained in the original grievance submission. Failure to comply with items (a) and/or (b) above shall not preclude processing the grievance. The grievance answer will be issued by the Local President within 10 working days following the day on which the grievance was received.

Step Two. Absent resolution of the grievance at Step One, management may present the grievance at Step Two. The Step Two grievance must be in writing, signed by the appropriate Step Two management official (as defined in footnote 7 above), or the Assistant General Counsel for Labor and Employee Relations and submitted to the NLRBU National Grievance Committee Chairperson, either personally or via electronic transmission, within 25 working days of the issuance of the Step One answer. A copy of the Step Two grievance must be served simultaneously on the Local Union President. The Step Two grievance answer will be issued by the NLRBU Grievance Committee Chairperson, such answer to contain the written concurrence of an official who is in a higher position than the official who

issues the answer within 25 working days after receipt of the Step Two grievance.

This submission shall include:

- (a) Nature of grievance and specific contract provision(s) allegedly violated; and
- (b) Corrective action requested and reasons for such action.

Upon request of the NLRBU President, the Agency shall provide any of the above-listed items not contained in the original grievance submission. Failure to comply with items (a) and/or (b) above shall not preclude processing the grievance. The grievance answer will be issued by the NLRBU President, within 25 working days following the day on which the grievance was received.

Section 7. The grievance procedure shall consist of the following for those grievances initiated by national management against the NLRBU:

The Assistant General Counsel for Labor and Employee Relations may present the grievance to the NLRBU President. The grievance must be in writing, signed by the Assistant General Counsel for Labor and Employee Relations, and submitted to the NLRBU President, either personally or via electronic transmission, within 25 working days following the date on which the Agency had knowledge, or reasonably should have had knowledge, of the facts giving rise to the grievance.

This submission shall include:

- (a) Nature of grievance and specific contract provision(s) allegedly violated; and
- (b) Corrective action requested and reasons for such action.

Upon request of the NLRBU President, the Agency shall provide any of the above-listed items not contained in the original grievance submission. Failure to comply with items (a) and/or (b) above shall not preclude processing the grievance. The grievance answer will be issued by the NLRBU President, within 25 working days following the day on which the grievance was received.

Section 8. If any grievance arises concerning any matters which the Agency's representatives involved or the NLRBU representatives in any of the earlier steps do not have authority to correct, the grievance may be initiated at the appropriate step of the grievance procedure which would allow the grievance to be considered by the person who has initial authority to take the requested corrective action. If the grievance is appropriately filed directly at Step Three, the grievance must be submitted to the appropriate Step Three management official within 25 working days following the date on which the aggrieved employee or a union officer had knowledge, or reasonably should have had knowledge, of the facts giving rise to the grievance.

Section 9. If any of the answers described in Sections 5, 6 and 7 above are not issued within the time limits specified, the grieving party may, at its option, within 15 working days from the date the answer was due to issue, proceed to the next step of the grievance process.

Section 10. Any specific grievance not presented, appealed to the next step or referred to arbitration within the time limits specified herein shall be deemed disposed of on the basis of the last answer issued.

Section 11. The time requirements regarding the issuance of answers or step submissions shall be tolled, but for no more than 5 working days per individual, in cases where the official responsible for the answer, the appropriate concurring official, or the grievant and/or his or her representative is away from the office on the last date when the answer or step submission is timely and then only tolled to the extent of his or her absence. The parties to any grievance in which this circumstances arises shall be given prompt notification.

Section 12. In calculating due dates for issuance of answers or step submissions, if the originating office is closed on the due date due to weather or other unanticipated events, such day(s) shall not be considered working day(s).

Section 13. Nothing herein should be deemed as foreclosing the parties from attempting to adjust the grievance without using the foregoing formal grievance procedure. At any formal step of this procedure, although not a regular part thereof, the responsible official is not precluded from utilizing such devices as mutually agreed-upon personal meetings or conferences, or other fact-finding methods where appropriate, so long as the foregoing is conducted in a manner consistent with applicable law and this Agreement. The responsible official may initiate such measures or he or she may do so

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upon request of the grievant, his or her union representative, the NLRBU, or as appropriate, the Agency, in the case of a grievance against the NLRBU.

Section 14. (a) All the foregoing time requirements can be altered and extended by mutual consent of all parties. For the submissions and answers at the steps below the final step of the grievance procedure, such time extension shall normally be determined by the local parties or their designees. For submissions and answers at the final step of the grievance procedure, requests for such time extensions shall normally be made to the Assistant General Counsel for Labor and Employee Relations or the NLRBU National Grievance Committee Chairperson, or their designees.

7

ARTICLE 16 ARBITRATION

Section 1. If the answer at the final step of the grievance procedure set forth in Article 15 above has not resolved the grievance, the NLRBU or management may refer the grievance to arbitration by transmitting electronic notice to the other party within 15 working days⁴⁷ after arbitration, either party may request the Federal Mediation and Conciliation Service (FMCS) to submit a list of 7 arbitrators having federal sector experience and who are either members of the National Academy of Arbitrators or who have equivalent experience and qualifications. Following the issuance of a final step answer, all further official communications and/or correspondence concerning the grievance shall be between appropriate Operations-Management Officials and the NLRBU Grievance Committee Chairperson, or their designee.

Except in cases arising under Section 7 of this Article, the moving party⁴⁸ initiates the arbitration process by requesting a panel of arbitrators from FMCS. In any case where the grieving party has not requested a panel within two years of the date of referral to arbitration⁴⁹, the responding party may request that the grievance be withdrawn by written request to that party that appealed the grievance to arbitration. Such a request may be made any time after to the expiration of the two year period. After receiving such notification, the party that appealed to arbitration will have 30 days to either withdraw or request an arbitration panel from FMCS and thereafter select an arbitrator in accordance with Section 3. When a grievance is withdrawn pursuant to this provision, the withdrawal shall not thereafter be cited in support of either party's position in any subsequent matter. In any case where grievances are consolidated pursuant to Article 16, section 4, the referral date will be the date of the first date of the first consolidation⁵⁰

In any case where a panel is called for under the procedures in this section,

⁴⁷ In calculating the due date for referrals, if the originating office is closed on the due date to weather or other unanticipated events, such days(s) shall not be considered working day(s).

⁴⁸ The moving party may be either the party that referred the grievance to arbitration or the responding party.

⁴⁹ For grievances referred prior to the effective date of this agreement, the referral date will be the effective date of the agreement.

⁵⁰ Thus if a grievance is referred on February 1, a second referred and consolidated on March 1, and a third referred and consolidated on April 1, the two year period will begin March 1.

the parties will jointly contact the arbitrator and request that a hearing be scheduled within 180 days after the date on which the arbitrator is selected.

Section 2. The time requirements regarding grievance referrals shall be tolled, but for no more than 5 working days per individual, in cases where the official responsible for the referral is away from the office and then only tolled to the extent of his or her absence. The parties to any grievance in which this circumstance arises shall be given prompt notification.

Section 3. Within 20 working days following receipt of the FMCS list, the parties will consult in an attempt to mutually agree upon an arbitrator from that list. If the parties cannot mutually agree upon one of the arbitrators within that 20-day period, on the 20th day they shall alternately cross off one name at a time, until one arbitrator remains, who shall be the arbitrator selected by the parties.

This striking process shall be completed on that 20th day. The obligation to be the first to cross off the name of an arbitrator shall alternate between the parties for each arbitration. Whenever there is more than one arbitration pending in which a panel has been designated by the FMCS but arbitrators have not been selected by the parties, the order of striking will be made in the sequential order of FMCS case numbers assigned by the FMCS when designating a panel of arbitrators.

Section 4. Within 5 days after referral to arbitration, either party may elect to consolidate that grievance with any other grievance already referred to arbitration, provided, however, the grievances contain substantial common issues of law or fact and originate in the same Regional Office or Headquarters Division, as applicable or contain substantial common issues of contract interpretation, law or fact and result from a policy decision by the General Counsel or Board, as applicable, or the Division of Operations-Management. If the other party objects to consolidation, the objection must be made within 15 days of receipt of the notice of election of consolidation. Absent mutual agreement, the matter will be referred promptly to the arbitrator for ruling prior to the opening of the hearing. The parties may mutually agree to consolidate any other matters pending arbitration.

Section 5. The arbitrator will be requested by the parties to render his or her award as quickly as possible but no later than 30 days after the conclusion of the hearing unless the parties otherwise agree.

Section 6. It is the understanding of the parties when setting forth statutory and government-wide rule or regulation in provisions of this Agreement, that such provisions are intended to have the identical meaning of the statute, government-wide rule or regulation as interpreted by the Federal Labor Relations Authority and/or the courts, as applicable. By such understanding, the parties intend to bind any arbitrator they use to that meaning. This understanding does not, however, preclude an arbitrator from deciding statutory and government-wide rule or regulation issues.

Section 7. Arbitration Procedures for Performance-based and/or Conduct-based Removals and Performance and/or Conduct-based Transfers. If elected by the NLRBU, the following expedited procedures shall apply to the arbitration of grievances appealing removals based on unacceptable performance and/or conduct and to grievances appealing transfers based on performance and/or conduct or transfers pursuant to Article 36 of this Agreement.

(a) Within 7 days after the receipt by the employee of the Agency decision to remove or transfer the employee, the NLRBU may refer the matter directly to arbitration.^{51,52}

⁵¹ The performance-based removal or any transfer shall be stayed pursuant to Article 18, Section 6(d). In situations in which the Agency decides to transfer an employee for reasons related to conduct and/or performance, if a grievance or an appeal to an appropriate authority is timely filed, the transfer will not be effectuated until the issuance of an initial decision of the arbitrator or, as applicable, the appropriate reviewing authority, which does not reverse the Agency's decision to transfer; provided, however, that such stay of action shall not exceed 60 days from the date of the Agency's decision to transfer the employee.

⁵² Removal letters will notify employees of their right to contest the action by filing an EEO complaint, an MSPB appeal, or through the grievance/arbitration procedure in Articles 15 and 16. With respect to the latter, Removal notices will include the following language in setting forth the options an employee may elect in order to contest the Agency action: "You may file a grievance challenging this action under the negotiated grievance procedure that is described in Article 15, Section 5, of the collective-bargaining agreement (Agreement) between the Agency and the NLRBU. If the grievance is timely filed, the NLRBU may, at the conclusion of the grievance procedure, refer the grievance to arbitration in accordance with Article 16 (Arbitration) of the Agreement. Alternatively, Article 16, Section 7, of the Agreement contains an expedited procedure for arbitration of removal actions. If you wish to challenge this action under the expedited arbitration procedure, you must contact the NLRBU since only the Union can refer this matter to expedited arbitration. Under the expedited arbitration procedure, the

(b) At the time a decision issues, management will, on behalf of the parties, request the FMCS to submit, on an expedited basis,⁵³ a list of 10 arbitrators having federal sector experience and who are either members of the National Academy of Arbitrators or who have equivalent experience and qualifications.

Within three (3) working days of the later of: a) the Agency's receipt of notification by the Union that it is referring the removal or transfer decision to expedited arbitration under this Section; or b) receipt of the list of arbitrators from the FMCS, management will send a communication from the parties by the fastest means possible to each arbitrator inquiring as to his or her availability and willingness to hear the case within 27 to 32 days from the date of the Agency's decision and issue a written decision within 25 days following the hearing. Such communication will request each arbitrator to respond to both parties within 48 hours.

The first five arbitrators, in the order on the FMCS list, who respond that they are so available and willing, will constitute the register from which the selection will be made in accordance with Subsection (c) below. In the event fewer than five of the arbitrators are available and the parties do not mutually agree upon an arbitrator from the list, the Agency will, on behalf of the parties, request another list of ten arbitrators from the FMCS and repeat the above procedure in order to supplement the initial register.

(c) Within 3 working days from the date a register of five arbitrators has been established, representatives of the parties will consult in an attempt to mutually agree upon an arbitrator from that list. If the parties cannot mutually agree upon one of the arbitrators within that 3-day period, on the 4th day they shall alternately cross off one name at a time until one arbitrator remains, who shall be the arbitrator selected by the parties. This striking process shall be completed on that 4th day. The obligation to be the first to cross off the name of an arbitrator shall alternate between the parties for each arbitration.

Section 8. Absent mutual agreement and subject to consultation as to situs and room, the arbitration hearing shall be scheduled primarily

NLRBU has 7 days (starting on the date that you receive this letter) to refer this matter to expedited arbitration. If you do not promptly contact the NLRBU, you may forfeit the opportunity to pursue expedited arbitration of this action."

⁵³ Management will obtain the list from the FMCS via electronic transmission or pick up the list in person in order to avoid any delay from mailing.

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during normal working hours at a location provided by the Agency.

Section 9. If no exceptions are filed by either party to the arbitration award, the decision of the arbitrator is final and binding.

Section 10. No later than 30 days after referral of the grievance to arbitration, either party shall have the right to make a prehearing motion to the arbitrator to decide the issue of grievability or arbitrability prior to the opening of the hearing. The arbitrator shall rule on the motion at least 60 days prior to the scheduled opening of the hearing.

Section 11. (a) "Just cause" is the standard to be applied in testing the appropriateness of each of the management actions set forth in Article 4 (Rights and Obligations of Employees), Section 6.

(b) In any disciplinary matter as described in Article 4, section 6, or in any adverse action as described in Article 18, it is agreed that the Agency has the burden of establishing a prima facie case. In cases involving contract interpretation or application, the Union has the burden of establishing a prima facie case.

Section 12. In grievances concerning adverse actions taken pursuant to 5 U.S.C. § 4303 and 5 U.S.C. § 7512 or actions of the same type taken against nonpreference eligible excepted service employees, an arbitrator shall be governed by 5 U.S.C. § 7701(c)(1), as applicable.

The foregoing shall have the identical meaning as 5 U.S.C. § 7121(e)(2), except that it shall also apply to nonpreference eligible excepted service employees.

Section 13. The Agency shall pay 50 percent and the NLRBU shall pay 50 percent of the fee and expenses of the arbitrator, the cost of any reporter or reporters, the cost of the arbitrator's transcript, and the cost, if any, of mutually agreed-upon office and hearing facilities. In any case settled prior to arbitration, each party will pay 50% of the arbitrator's fees, if any.

ARTICLE 17
PROBATIONARY AND ADMINISTRATIVE
TRIAL PERIOD⁵⁴

Section 1. The Agency recognizes its obligation to assist probationary employees in order to make them successful in their jobs so that they can become permanent employees. The Agency shall utilize the probationary year or 2-year administrative trial period as fully as possible to determine the fitness and qualifications of the employee for continued employment.⁵⁵

Section 2. Post-Appointment Performance and Conduct. During a competitive service employee's probationary year or an excepted service employee's 2-year administrative trial period, it is understood that management shall:⁵⁶

(a) Inform employees within a reasonable period of time of conduct deficiencies which reflect adversely upon an employee's fitness or qualifications for continued employment, and bring constructive suggestions for improvement to their attention in private;

(b) Consistent with Article 9 (Performance Appraisal System), Section 4, continually review the performance of employees, and shall inform employees within a reasonable time of deficiencies in their work performance and bring constructive suggestions to their attention; and

(c) If, during an employee's probationary year or 2-year administrative trial period, management determines that the employee's performance, unless improved, will result in non-retention, the employee shall, as soon as practicable, be provided the following:

⁵⁴ The administrative trial period for preference eligible excepted service employees is 1 year.

⁵⁵ In addition to the provisions in this Article, the Agency will provide probationary employees and employees on their administrative trial period with career development review and counseling in accordance with Article 6 (Orientation, Training, Career Development and Bridge Program).

⁵⁶ The failure to provide such to an employee in his or her probationary year or 2-year administrative trial period will not affect the validity of a determination not to retain such an employee. The final action will not be effective prior to providing the employee a reasonable opportunity to demonstrate his or her qualifications for continued employment, unless the employee's probationary year or 2-year administrative trial period ends before such opportunity can be provided.

(1) The critical element(s) in which the employee has failed to demonstrate fully his or her qualifications for continued employment;

(2) The required improvements in performance necessary for retention beyond the probationary year or 2-year administrative trial period;

(3) A reasonable opportunity, but not beyond the completion of the probationary year or 2-year administrative trial period, to demonstrate his or her qualifications for continued employment.

(4) Consistent with its obligation to render employees assistance to make them successful in their jobs, management will solicit employee suggestions with respect to any assistance that may be helpful.

(d) An employee may, within 5 working days of the management determination referred to in subsection (c) above, request and Management will, as soon as possible, but no later than 10 working days after the request, provide the employee in writing with the information described in subsection (c) above.

Section 3. Non-grievability of Agency Determinations. The termination, demotion, denial of promotion, suspension, reduction in grade or compensation of an employee based upon the employee's performance and/or pre- or post-appointment conduct, or the furlough without pay for 30 days or less of an employee based upon lack of work or funds, or other non-disciplinary reasons during the probationary year or 2-year administrative trial period, shall not be subject to the grievance or adverse action procedures of this Agreement.⁵⁷

Section 4. Actions Based Upon Post-Appointment Performance, Conduct, or Efficiency of the Service. (a) When management proposes the termination, demotion, denial of promotion, suspension, reduction in grade or compensation of an employee based upon the employee's performance and/or post-appointment conduct, or the furlough without pay for 30 days or

⁵⁷ The provisions of this Article do not affect any right under applicable law or government-wide rule or regulation, which any employee may have regardless of competitive or excepted service status or tenure, to appeal an Agency action based upon grounds other than performance, conduct, or lack of work or funds or other non-disciplinary reasons, by filing a grievance or an appeal with an appropriate Government agency, or the courts.

less based upon lack of work or funds or other non-disciplinary reasons, during the probationary year or 2-year administrative trial period, the employee is entitled to the following procedure:⁵⁸

- (1) Upon a determination that an employee's performance and/or conduct warrants any of the above actions, he or she shall be so notified, in writing, by the Regional Director or, in the case of Headquarters employees, the Division Head [Board "shall be so notified, in writing, by the Second Level Supervisor"] who will set forth the specific reasons for his or her decision.
- (2) The employee may, within 5 working days after receipt of the notice, request that the Regional Director or Division Head [Board "request that the Second Level Supervisor"] reconsider the action. Such request shall be in writing and must include a statement of the specific reasons why such action should not be taken.
- (3) The Regional Director or Division Head [Board "The Second Level Supervisor"] shall respond to any such requests, in writing, within 3 working days.
- (4) If Management's response is a reaffirmation of the determination to take any of the above actions, the employee may appeal directly to the General Counsel [Board "Board Member or his/her designee"]. Such appeal must be specific and in writing, and must be received by the General Counsel [Board "Board Member or his/her designee"], or if presented by mail postmarked, within 7 working days of receipt of Management's response.
- (5) The General Counsel [Board "Board member or designee"] will review the Regional Director's [Board "Second Level Supervisor's"] determination and the appeal, and, within 7 working days of receipt of the appeal, shall inform the employee in writing of the decision on

⁵⁸ Except for the type of misconduct for which non-probationary or non-administrative trial period employees are not entitled to a 30-day written notice, or for which they may be placed in non-duty status, under Article 18 (Adverse Actions), Sections 5(c) and 5(d), respectively, the final action will be effective no earlier than the exhaustion of this procedure provided, however, that in the case of a termination, such time requirements do not result in the retention of an employee beyond his or her probationary year or 2-year administrative trial period unless applicable law and government-wide rule or regulation permit the extension of the probationary year or 2-year administrative trial period, as applicable, while an employee exhausts this procedure.

the appeal. In the case of the termination of a competitive service employee, the decision shall inform the employee of his or her right of appeal to the Merit Systems Protection Board (MSPB) as provided in 5 CFR § 315.806, and of the time limit within which the appeal must be submitted.

(b) The time requirements in this procedure shall be tolled, but for no more than 5 working days per individual, in cases where the official responsible for the decision or the employee is away from the office, and then only tolled to the extent of his or her absence(s). Further, all of the foregoing time requirements can be altered and extended by mutual consent of all parties.

Section 5. Termination or Other Discipline for Conditions Arising Before Appointment. When management proposes to terminate or otherwise discipline an employee serving a probationary year or 2-year administrative trial period for reasons based in whole or in part on conditions arising before his or her appointment, the employee is entitled to the following:

(a) Notice of Proposed Action. The employee is entitled to an advance written notice stating the reasons, specifically and in detail, for the proposed action.

(b) Employee's Answer. The employee is entitled to a reasonable time for filing a written answer to the notice of proposed action and for furnishing affidavits in support of his or her answer. If the employee answers, the Agency shall consider the answer in reaching its decision.

(c) Notice of Decision. The employee is entitled to be notified of the Agency's decision at the earliest practicable date. The Agency shall deliver the decision to the employee at or before the time the action will be made effective. The notice shall be in writing, inform the employee of the reasons for the action, and, in the case of the termination of a competitive service employee, inform the employee of his or her right of appeal to the MSPB as provided in 5 CFR § 315.806, and of the time limit within which the appeal must be submitted.

Section 6. Appeals to the Merit Systems Protection Board. (a) An employee in the competitive service who is serving a probationary period may, consistent with 5 CFR § 315.806, appeal a termination to the MSPB within the time limits prescribed by the MSPB if it is alleged that the termination was: (1) not required by statute but alleged to be based on partisan political

reasons or marital status; or (2) based upon conditions arising before appointment, and not effected in accordance with the procedural requirements of 5 CFR § 315.805.

(b) Such an employee may also, consistent with 5 CFR § 315.806, appeal to the MSPB a termination which the employee alleges was based on discrimination because of race, color, religion, sex, national origin, age (provided that at the time of the alleged discriminatory action the employee was at least 40 years of age), or physical handicap, only if such discrimination is raised in addition to one of the issues stated in Subsection (a) of this Section.

Section 7. An employee against whom an action is proposed under this Article is entitled to be represented by the NLRBU, an attorney or other representative. Such employee is entitled to a reasonable amount of official time, in accordance with Article 28 (Official Time), Section 13, if he or she is otherwise in an active duty status, in order to review the material relied upon by the Agency to prepare: (1) an answer; (2) a request for reconsideration; (3) an appeal to the General Counsel; and (4) an appeal to the MSPB.

ARTICLE 18
PERFORMANCE-BASED ACTIONS, ADVERSE ACTIONS,⁵⁹
AND SUSPENSIONS

Section 1. Introduction. Pursuant to applicable law and Government-wide rule and regulation, the Agency may take certain actions against an employee based upon--

- (a) "unacceptable performance;"
- (b) performance;
- (c) conduct; or
- (d) a combination of performance and conduct.

In addition, the Agency may furlough an employee for 30 days or less because of lack of work or funds or other nondisciplinary reasons.

Section 2. Definitions. (a) "Unacceptable performance" as defined in 5 U.S.C. § 4301(3), means performance of an employee which fails to meet established performance standards in one or more critical elements of such employee's position. Pursuant to Article 9 (Performance Appraisal System), a rating of "Unacceptable" in one or more critical elements of an employee's position is regarded as "unacceptable performance."

(b) "Promotion of the efficiency of the service" is the basis upon which the Agency may affect adverse actions under Chapter 75 of Title 5 of the United States Code.

Section 3. Types of Actions. (a) Pursuant to the provisions of Chapter 43 of Title 5 of the U.S.C. and this Agreement, the following actions may be taken based upon unacceptable performance:

- (1) Removal
- (2) Reduction in Grade

⁵⁹ The provisions of this Article do not apply to employees serving a probationary or administrative trial period (see Article 17), a suspension or removal under 5 U.S.C. § 7532 (relating to actions in the interests of national security), a reduction-in-force action under 5 U.S.C. § 3502, or an action initiated under 5 U.S.C. § 1206 by the Special Counsel of the MSPB.

(b) Pursuant to the provisions of Chapter 75 of Title 5 of the U.S.C. and this Agreement, the following actions may be taken for such cause as will promote the efficiency of the service and may only be taken based upon performance, conduct, or a combination of performance and conduct:

(1) In accordance with 5 U.S.C. § 7511–7514:

- (A) A removal;
- (B) A reduction in grade;
- (C) A reduction in pay; or
- (D) A suspension for more than 14 days.

(2) In accordance with 5 U.S.C. § 7501–7504, a suspension for 14 days or less.

(c) An employee may be furloughed for 30 days or less for such cause as will promote the efficiency of the service based upon lack of work or funds or other nondisciplinary reasons.

Section 4. Reduction in Grade or Removal Based Upon Unacceptable Performance. (a) Consistent with the provisions of Article 9 (Performance Appraisal System), an employee whose performance, if not improved, will result in a decision to take a performance-based adverse action will, before the issuance of a notice of proposed adverse action, first be provided with a Performance Improvement Plan.

(b) An employee whose reduction in grade or removal is proposed based upon unacceptable performance is entitled to--

(1) at least 45 days advance written notice of the proposed action which identifies:

- (A) specific instances of unacceptable performance by the employee on which the proposed action is based; and
- (B) the critical elements of the employee's position involved in each instance of unacceptable performance;

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(2) be represented by the NLRBU or an attorney or other representative;

(3) a reasonable amount of duty time during the workday to review the material relied upon by the Agency to support its proposal and to prepare an answer and to secure affidavits;

(4) a reasonable time to answer orally and in writing; and

(5) a written decision which, unless proposed by the General Counsel [Board Member], has been concurred in by an official who is in a higher position than the official who proposed the action, and which specifies:

(A) the instances of unacceptable performance by the employee on which the reduction in grade or removal is based;

(B) the appeal procedures available and the manner and time in which the employee may utilize the procedures;

(C) the date the decision is to be effectuated; and

(D) the applicable stay of action provisions.

(c) The decision to retain, reduce in grade, or remove an employee--

(1) shall be made by the Division Head [Office Head] or his/her designee, within 30 days after the date of expiration of the notice period; and

(2) in the case of a reduction in grade or removal, may be based only on those instances of unacceptable performance by the employee--

(A) which occurred during the 1-year period ending on the date of the notice described in Section 4(b)(1) above in connection with the decision; and

(B) for which the notice and other requirements of this Section are complied with.

(d) Expungement from Files. If, because of a decision that adverse action was not warranted, the employee is not reduced in grade or removed,

the advance written notice described in Section 4(b)(1) above, and all responses thereto shall be removed from any Agency record relating to the employee. If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance written notice described in Section 4(b)(1) above, any entry or other notation of the unacceptable performance for which the action was proposed under this Section shall be removed from any Agency record relating to the employee.

Section 5. Adverse Actions for Such Cause as Will Promote the Efficiency of the Service (Except for Suspensions of 14 Days or Less). (a) The Agency may take an adverse action covered by this Section against an employee only for such cause as will promote the efficiency of the service.

(b) Except as provided in Section 5(c), an employee against whom an action is proposed under this Section is entitled to –

- (1) at least 30 days advance written notice, unless there is a reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, setting forth the action which is proposed and stating the specific reasons for the proposed action, as well as the employee's right to review the material relied upon by the Agency to support the proposed action;⁶⁰
- (2) be represented by the NLRBU, an attorney or other representative;
- (3) a reasonable amount of duty time during the workday to review the material relied upon by the Agency to support its proposal and to prepare an answer and to secure affidavits;
- (4) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer. If an employee chooses to answer orally, the employee is entitled to duty time during the workday for this purpose. The Agency shall designate an official to hear the employee's oral answer who has authority either to make or recommend a final decision on the proposed adverse action; and

⁶⁰ The Agency may not use material which cannot be disclosed to the employee or his or her representative or designated physician to support the reasons in the notice.

(5) a written decision at the earliest practicable date which, unless proposed by the General Counsel [Board Member], has been concurred in by an official who is in a higher position than the official who proposed the action, and which specifies:

(A) the action to be taken and the specific reasons therefor;

(B) the appeal procedures available and the manner and time in which the employee may utilize the procedures; and

(C) the date the decision is to be effectuated.

(c) Exceptions are permitted when:

(1) An exception to the 30-days advance written notice is authorized when the crime provision of Section 5(b)(1) is invoked. The employee is entitled to furnish an answer to the proposed adverse action together with affidavits and other documentary evidence in support of the answer. However, the Agency may require that such answer and supporting documents be submitted within a reasonable period of time under the circumstances, but not less than 7 days. When the circumstances require immediate action, the Agency may place the employee in a nonduty status with pay for such time, not to exceed 10 days, as is necessary to effect the action.

(2) The advance written notice and opportunity to answer are not necessary for furlough without pay for 30 days or less due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, sudden emergencies requiring immediate curtailment of activities, or, consistent with Government-wide rule and regulation, a lapse of appropriations. However, the employee(s) will be provided an explanation of the reasons for such furlough.

(d) *Employee Duty Status*. In regard to removal actions, when it is determined by the Agency that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in the loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the Agency may, consistent with 5 CFR § 752.404(b)(3), elect one or a combination of the following alternatives:

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- (1) Assigning the employee to duties where he or she is no longer a threat to safety, the Agency mission or to Government property;
- (2) Allowing the employee to take leave, or carry him or her in an appropriate leave status (annual, sick, leave without pay, or absence without leave) if the employee has absented himself or herself from the worksite without requesting leave;
- (3) Curtailing the notice period when the Agency can invoke the provisions of 5 CFR § 752.404(d)(1), the "crime provision," or
- (4) Placing the employee in a paid, nonduty status for such time as is necessary to effect the action.

(e) *Expungement from Files.* If, because a decision that adverse action was not warranted, no further action is taken, the advance written notice described in Section 5(b)(1) above, and all responses thereto shall be removed from any Agency record relating to the employee. If, because of performance, conduct, or conduct and performance, improvement by the employee during the notice period, no further action is taken, and the employee's performance and/or conduct, as applicable, continues to be at such improved level or better for 1 year from the date of the advance written notice described in Section 5(b)(1) above, any entry or other notation of the performance and/or conduct for which the action was proposed shall be removed from any Agency record relating to the employee.

Section 6. Appeals and Grievances of Adverse Actions (Except Suspensions for 14 Days or Less):⁶¹ (a) An employee covered by this Article who is in the competitive service, a preference eligible in the excepted service, or a nonpreference eligible in the excepted service who has completed 2 years of continuous service in the same or similar positions (other than a temporary appointment limited to 2 years or less) may elect to appeal an adverse action in accordance with Subsection (a) (1) or (2) below, or file a formal EEO complaint. An employee may elect only one of these three options.

- (1) Where the written decision has been issued, the employee (competitive or excepted service, as described in Subsection (a) above),

⁶¹ These procedures do not affect any right under applicable law or government-wide rule or regulation, which any employee may have regardless of competitive or excepted service status or tenure, to appeal an agency action based upon grounds other than performance or conduct by filing a grievance, or an appeal with an appropriate Government agency or the courts.

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may elect to appeal through the grievance-arbitration procedure. For actions other than removal based on unacceptable performance and/or conduct, the grievance must be filed in accordance with the time requirements set forth in Article 15 (Grievance Procedure), Section 5, and processed in the manner described in Article 15, except that it should be filed directly at Step Three of the grievance procedure. Upon completion of the grievance procedure, the NLRBU may in accordance with Article 16 (Arbitration) refer the grievance to arbitration. The filing of a grievance does not necessarily guarantee the referral of the grievance to an arbitration hearing. For removals based on unacceptable performance and/or conduct, the matter may be referred directly to arbitration in accordance with Article 16, Section 7.

(2) Where the written decision has been issued, and if required by MSPB the action has been effected, an employee who is in the competitive service or in the excepted service, as described in Subsection (a) above, may elect to appeal to the MSPB within the time limits and in the manner prescribed by the MSPB.

(b) (1) Appeals to the Merit Systems Protection Board. Subject to paragraph (2) of this Subsection, the decision of the Agency, if appealed to the MSPB, shall be sustained only if the Agency's decision--

(A) in the case of an action based on unacceptable performance described in 5 U.S.C. § 4303, is supported by substantial evidence, or

(B) in any other case, is supported by a preponderance of the evidence.

(2) Notwithstanding paragraph (1), the Agency's decision may not be sustained if the employee--

(A) shows harmful error in the application of the Agency's procedures in arriving at such decision;

(B) shows that the decision was based on any prohibited personnel practice described in 5 U.S.C. § 2302(b); or

(C) shows that the decision was not in accordance with law.

(c) *Appeals through the Grievance-Arbitration Procedure.* In grievances concerning adverse actions taken pursuant to 5 U.S.C. § 4303 and 5 U.S.C. § 7512, an arbitrator shall be governed by 5 U.S.C. § 7701(c)(1), as applicable, the language of which is set forth in subsections (b)(1) and (b)(2) above.

The foregoing shall have the identical meaning as 5 U.S.C. § 7121(e)(2).

(d) *Stay of Action.* In removal cases based on unacceptable performance, if a grievance or an appeal to an appropriate authority is timely filed, removal from the payroll will not be effectuated until the issuance of an initial decision of the arbitrator or, as applicable, the appropriate reviewing authority, which does not reverse the Agency's decision to remove; provided, however, that such stay of action shall not exceed 60 days from the date of the Agency decision.

Section 7. Suspensions for 14 Days or Less.

(a) An employee may be suspended for 14 days or less only for such cause as will promote the efficiency of the service.

(b) An employee against whom a suspension for 14 days or less is proposed is entitled to –

- (1) an advance written notice stating specific reasons for the proposed action, as well as the employee's right to review the material which is relied upon by the Agency to support its proposed action;⁶²
- (2) be represented by the NLRBU, an attorney, or other representative;
- (3) a reasonable amount of duty time during the workday to review the material relied upon by the Agency to support its proposal and to prepare an answer and to secure affidavits;
- (4) a reasonable time but not less than five working days to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer; and

⁶² The Agency may not use material which cannot be disclosed to the employee or his or her representative or designated physician to support the reasons in the notice.

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(5) a written decision at the earliest practicable date which specifies:

(A) the action to be taken and the specific reasons therefor;

(B) the manner and time in which the employee may utilize the grievance procedure; and

(C) the date the decision is to be effectuated.

(c) Upon the issuance of the written decision, the employee may file a grievance in the manner described in Article 15 (Grievance Procedure).

(d) *Expungement from Files.* If, because a decision that the suspension was not warranted, no further action is taken, the advance written notice described in Section 7(b)(1) above, and all responses thereto shall be immediately removed from any Agency record relating to the employee. If, because of performance, conduct, or conduct and performance improvement by the employee during the notice period, no further action is taken, and the employee's performance and/or conduct, as applicable, continues to be at such improved level or better for 1 year from the date of the advance written notice described in Section 7(b)(1) above, any entry or other notation of the performance and/or conduct, as applicable, for which the action was proposed shall be removed from any Agency record relating to the employee.

ARTICLE 19
EMPLOYEE PERSONNEL, PERFORMANCE, SECURITY, AND
OTHER FILES

Section 1. Employees' Official Personnel Folders (OPF), and Employee Performance Files (EPF), shall, in accordance with applicable law and government-wide rule and regulation, be maintained by the Human Resources Branch.

Section 2. OPFs and EPFs will be stored electronically and will be available in "read only" mode for employees.⁶³ Employees may print a paper copy of any document or record that is in his/her electronic file. Any written communications the contents of which the employee has not been timely apprised and which are placed in any system of records maintained by the Employer may not be used against the employee in any manner. Consistent with applicable law and government-wide rule and regulation, the EPF of an employee will contain only relevant material which pertains to the employee's performance.

Section 3. (a) An employee will be informed of any complaints received by the Agency regarding the work performance or conduct of the employee so as to apprise the employee of his or her relationship with members of the public and officials of other Government agencies which:

- (1) Management might rely upon; and
- (2) Prompts further inquiry.

(b) The employee will be informed of such complaints before the Agency conducts an inquiry into the matter by examining other employees or persons outside the Agency unless such notification would interfere with the conduct of the investigation or its appearance of impartiality.

(c) The employee may file a response to any complaint received by the Agency, and if the complaint is maintained by the Agency, the response shall be filed along with the complaint or record of complaint.

⁶³ Prior to the time when electronic access to OPFs and EPFs is fully available, employees may submit requests to view their OPF or EPF to the Human Resources Branch, and requests will be granted in accordance with law and regulation. Copies of any documents in the file will be provided upon request.

(d) Complaints regarding an employee's work performance or conduct, as well as communications directed to the Agency but not to the individual employee, are not to be answered by the employee. The management official responsible for responding to any such complaint will provide a copy of any written response, or oral summary of an oral response, to the affected employee(s).

Section 4. To the extent permitted by applicable law and government-wide rule and regulation, any adverse materials placed in an employee's files covered by this Article will be removed after 1 year, absent recurrence, except insofar as such may be contained in career development performance appraisals as set forth below, or as otherwise provided in Article 18 (Adverse Actions). Performance Appraisals will be removed from employee files after 4 years; however, management retains the right to keep the files of any employee beyond that time if the files are required for purposes of litigation.

Section 5. As permitted by applicable law and government-wide rule and regulation, relevant materials submitted by employees for inclusion in either their OPF or EPF shall be filed in such files.

Section 6. Before an employee's performance appraisal is submitted to the reviewing official, the supervisor or appraising official who is responsible for conducting the appraisal interview will provide the employee with notice of his or her right to review his or her EPF and the method of obtaining such review. Failure to comply with this provision will not affect the validity of either the appraisal process or the content of the appraisal or any recommendations contained therein.

Section 7. Security Files. Employee security files are maintained in the Agency security office in Washington, D.C. Security files contain information regarding employees' suitability and security clearance. Employees will be notified in writing at the completion of any formal security clearance investigation. Upon completion of a security investigation, consistent with the Privacy Act and other applicable law, government-wide rule and regulation, security files containing materials relating to the investigation will be made available to employees or, with the written authorization of the employee, a designated representative upon request. Individuals interested in information contained in copies of records temporarily filed in the NLRB records, but access to which is controlled by the Office of Personnel Management (OPM), will be referred to the appropriate OPM system manager.

Section 8. Other Records and Files. In addition to personnel, performance, and security files, and in accordance with the provisions of the Freedom of Information Act and the Privacy Act, employees and/or their designated representatives have the right to review all other Agency records about them that are maintained in systems of records (i.e., Occupational Injury and Illness, Employee Counseling Assistance, EEO appeal, and grievance records) and receive copies of such records.

Section 9. Requests for Amendment. If employees believe that personal information about them maintained in systems of records is incorrect, they may make a written request to the Director of Human Resources or designee, that the information be amended, corrected, expunged, or, if the Agency refuses to amend, correct, or expunge such information, that it be supplemented with a statement of objections. Employees may appeal Agency denials of requests for amendment or correction.

Section 10. Employee Information Provided to Outside Parties. The Agency will comply with the Privacy Act, and all relevant rules and regulations with respect to the disclosure of any personal or employment information about an employee to an outside person or entity. Absent a written waiver by the employee, only the following information may be disclosed about a current employee to a prospective non-Federal employer:

- (a) Tenure of employment;
- (b) Civil service status; and
- (c) Length of service in the Agency and the Government.

Electronic OPFs and EPFs will be available for review by the NLRBU when authorized by the employee or as required by law.

MEMORANDUM OF AGREEMENT

The parties agree that when all employees have electronic access to their EPF and OPF, the duplicate files in the Regional Office will no longer be maintained by the Agency. When the Agency ceases maintaining such Regional Office files, each employee will be given his or her Regional Office file. If the employee declines to accept his/her file, the file will be destroyed by the Agency. After electronic access has been implemented, no Regional Office files will be maintained.

For the NLRBU:

For the Agency:

Burt Pearlstone

Harry E. Jones

Date: 02/13/2014

Date: 02/13/2014

ARTICLE 20
OFFICE FACILITIES

Section 1. (a) Reasonable bulletin board space shall be made available to the NLRBU for the posting of official notices, bulletins, or other material protected by 5 U.S.C. Chapter 71. All such material shall be signed by a designated and recognized Local or National NLRBU representative.

(b) To the extent that space is available, management shall provide a reasonable amount of space for NLRBU files. The NLRBU will limit the amount of paper files to be stored in Agency space to a reasonable level.

(c) The NLRBU Washington Local will be provided with an office and suitable equipment at the 1099 14th Street, Franklin Court, Headquarters building.

Section 2. (a) "Facilities" is defined as office space and equipment such as use of intra office mail delivery systems; photocopy equipment; facsimile equipment; computers, printers, "e-mail" systems, modems, scanners, and other systems for the storage, reproduction, and transmission of electronically recorded data; and the General Telecommunications System, for distribution of NLRBU communications; and conference rooms.

(b) To the extent available in the office, the NLRBU, upon request, shall be provided reasonable use of Agency facilities for the purpose of conducting representational activities, provided that such use does not interfere with the work requirements of the office.⁶⁴

(c) Employees, upon request, shall be provided reasonable use of Agency facilities in connection with the investigation, presentation, appeal, and litigation of grievances; unfair labor practice charges and complaints; and appeals and complaints filed under statutory appeal procedures, provided that such use does not interfere with the work requirements of the office.

Section 3. Management will promptly distribute hard copies of this Agreement to current and future employees. The Agreement will also be

⁶⁴ The provisions of this Article do not preclude the NLRBU from requesting and having approved reasonable use of Agency facilities for internal union purposes, provided that such use is during non-duty hours, does not interfere with the work requirements of the office, and that the NLRBU provides reimbursement and/or supplies for such use.

made available on portable data storage devices and posted on the Agency's intranet. Any National Supplemental Agreements will also be distributed in hard copy and posted on the intranet. Management will assure that there are sufficient copies of the aforementioned documents in each Agency office for the above purpose.

Section 4. Unless available on the Intranet, one current copy of the NLRB Administrative Policies and Procedures Manual shall be maintained in each office for the use of all employees. Unless available on the Internet or Westlaw, a copy of the Code of Federal Regulations currently maintained in the office will be available to all employees.

Section 5. The following NLRBU National Officers-President, Executive Vice President, Secretary, Treasurer, Grievance Committee Chairperson, Support Staff Representative, and District Vice Presidents-and the Washington Local shall each be supplied with a current copy of the NLRB Administrative Policies and Procedures Manual and will have access to the Code of Federal Regulations currently maintained in their respective offices, unless these are available to such officers on the Intranet, Internet, or Westlaw.

Section 6. Upon request, national and local NLRBU representatives who do not have access to Westlaw will be given access for the purpose of engaging in representational duties.

Section 7. The Agency shall provide a separate page listing in the Agency electronic telephone directory of the following: the names, office locations, and office telephone numbers of NLRBU Executive Committee officers, District Vice Presidents, and Committee Chairpersons, and the Washington Local officers. The NLRBU shall provide the information to be included in such a listing and will update such information, as necessary.

Section 8. The following procedures shall apply concerning new acquisitions, relocations, expansions, consolidations, or reductions of physical space that affect employee working conditions in the field (hereinafter referred to as "space reallocation"). (a) Procurement Representative⁶⁵

⁶⁵ As used in this Article, a procurement representative is an individual who participates "personally and substantially in a Federal agency procurement" as defined in Federal Acquisition Regulation, 48 CFR § 15.413.

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(1) The Agency will work with a national NLRBU representative and local NLRBU representatives who will be designated as procurement representatives⁶⁶ on all proposed space plans relating to space reallocation. The local NLRBU representative(s) who serves as a procurement representative will assist in developing space requirements in consultation with the Regional Director. Unless designated by the national NLRBU to bargain on its behalf or designated by a local NLRBU to bargain on its behalf, employees designated by the NLRBU as procurement representatives for particular procurement actions will not be dealt with by management for the purposes of collective bargaining. The obligation to bargain space reallocations is with the NLRBU, not the procurement representatives.

(2) The NLRBU will not be asked to designate a procurement representative(s) if no procurement-sensitive information⁶⁷ will be provided.

(3) The NLRBU's designation of procurement representatives is optional.

(4) A local NLRBU may designate up to two employees as procurement representatives.

(5) A prerequisite to receiving procurement-sensitive information is the designation of a procurement representative(s).

(6) The Agency will provide the procurement representative(s) with copies of relevant procurement regulations.

(7) Procurement representative will sign a form which states: "I acknowledge that, consistent with FAR, I may become personally and substantially involved in a procurement action and may receive procurement-sensitive information. I understand that

⁶⁶ The change in nomenclature from "procurement official" in prior agreements to "procurement representative" in the current agreement is not intended to affect in any way the rights and obligations of the procurement officials/procurement representatives as they existed in prior agreements

⁶⁷ As used in this Article, procurement-sensitive information means contractor bid or proposal information or source selection information as defined in Federal Acquisition Regulation, 48 CFR Part 3.

the improper disclosure of such information may result in criminal and civil penalties and administrative remedies.”⁶⁸

(8) When the Agency provides information to the procurement representative (s), it will specifically inform the procurement representative (s) which of that information it considers procurement-sensitive.

(9) A procurement representative's receipt of information will not be construed as a waiver of the NLRBU's right to information which can lawfully be disclosed to the NLRBU.

(b) Consistent with law and government-wide rule and regulation, the Agency will notify the NLRBU of any space reallocation of an Agency field office or Headquarters office as soon as practicable and bargain, to the extent required by law.

(c) The Agency will notify the NLRBU's designated national representative (s) at the same time as any notice concerning space reallocation is given to any affected local union whether by national or local management.

(d) The Agency (Facilities and Property Branch) shall develop and provide an initial space layout proposal to local management and to the NLRBU for review. The plan will contain appropriate space for Agency operations, conform to all local building fire, safety codes, and Article 23 of the Agreement, provide for the security of NLRB human and material resources, and conform to traditional, efficient space design concepts.

(e) Field offices and Headquarters offices will be advised of the availability of modular office systems for support staff work areas when there is relocation, renovation, or as part of the cyclical furniture replacement schedule.

(f) The Agency will maintain on the intranet a list of the expiration of all Agency field office leases and the Headquarters office lease upon the execution of this Agreement and update this list, as necessary.

⁶⁸ An e-mail sent from the procurement representative's Agency e-mail address that includes the text of the form will be considered to be a signed form.

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(g) When the Agency learns of a space reallocation other than by lease expiration in any field office or Headquarters office, it shall notify the NLRBU as soon as practicable, after the Agency learns of such space action.

Section 9. Consistent with law, the Agency shall apply its business card policy to all employees whose job duties require that they meet with the public.

Section 10. All employees will be provided a working telephone and will have access to the Internet.

ARTICLE 21 HOURS OF WORK

Section 1. Overtime. (a) *General.* The Office Head;⁶⁹ or his or her designee, may direct, authorize, or subsequently approve overtime work pursuant to applicable law and government wide rule and regulation. Compensation for overtime work shall be in accordance with Subsection (e) or (f) below, as applicable. However, employees may request compensation to be either paid at the applicable overtime rate or to be credited as compensatory leave. With regard to any such request, management will, in reaching its determination, consider whether such method of compensation is consistent with management's responsibility to best utilize budget and staffing resources.

(b) *Definition.* Overtime for the purpose of this Article means hours worked outside of an employee's basic workweek which are in excess of 40 hours per week or in excess of 8 hours per day, and are compensable either under Title 5 of the U.S. Code or the Fair Labor Standards Act. All work of the Agency, including trials and trial preparation, hearings, elections, including pre-election conferences and counts, meeting with witnesses by telephone or in person, attempting to locate witnesses, writing, performing research, preparing and typing documents, copying and performing administrative functions, which is performed outside scheduled hours and which is directed, authorized, or approved, is compensable. Overtime may be earned in amounts equal to the full hour and 1/4 hour actually worked.

(c) *Coverage.*

(1) All employees are covered under the overtime provisions of Title 5 of the U.S. Code.

(2) Consistent with 5 CFR § 551.101 et seq., employees classified at GS-4 or below are covered by the Fair Labor Standards Act (FLSA). Employees classified at GS-5 through GS-10 shall be exempt only if the employee is an executive, administrative, or professional employee as defined in 5 CFR § 551.204, 551.205, and 551.206. Consistent with 5 CFR § 551.202, exemption criteria shall be narrowly construed to apply only to those employees who are clearly within the terms and spirit of the exemption; the burden of proof

⁶⁹ In the field, "Office Head" refers to the Regional Director. In Headquarters, "Office Head" refers to the Division Head, Branch Chief, Board Member or Board Member's Chief Counsel, as applicable.

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rests with the Agency if it is claiming an exemption; and all employees who clearly meet the criteria for exemption must be exempted.

(d) Scheduling of Travel. To the maximum extent practicable, the Agency shall schedule the time to be spent by an employee in a travel status away from his or her official duty station within his or her regularly scheduled workweek (the officially prescribed days and hours during which an employee is required to be on duty regularly).

The foregoing shall have the identical meaning as 5 U.S.C. § 6101(b)(2).

(e) Title 5 of U.S. Code.

(1) Hours worked in excess of 40 hours in 1 week or 8 hours in 1 day are compensable only if such work is directed, authorized, or approved by the Office Head or his or her designee.

(2) Authorized leave with pay is deemed employment and does not reduce the amount of compensable overtime to which the employee may be entitled.

(3) Time spent in travel outside of an employee's normal duty hours may be compensated as employment for the purpose of computing overtime as provided by 5 CFR § 550.112(g). That is, time in travel status away from the official duty station is employment pursuant to 5 CFR § 550.112(g) only when:

(A) It is within the employee's regularly scheduled administrative workweek; or

(B) The travel: (i) involves the performance of actual work while traveling; (ii) is incident to travel that involves the performance of work while traveling; (iii) is carried out under such arduous and unusual conditions that the travel is inseparable from the work; or (iv) results from an event which could not be scheduled or controlled administratively.

(4) Time spent in travel outside of an employee's normal duty hours may also be compensated pursuant to 5 CFR Part 550, Subpart N-Compensatory Time Off for Travel, when such time is not otherwise compensable. The Memorandum of Agreement (MOA) entitled

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“Compensatory Time Off for Travel,” dated October 17, 2005, governs the procedures to follow in implementing compensatory time off for travel pursuant to this section, and the MOA is hereby incorporated by reference into this agreement.

(5) For employees whose basic rate of pay is greater than the basic rate of pay for GS-10, Step 10, compensation for overtime may, at the sole discretion of the Office Head or his or her designee, either be paid at the applicable overtime rate, or credited to an employee’s leave account as compensatory leave for later use.

(6) For employees whose basic rate of pay is at or below the basic rate of pay for GS-10, Step 10, overtime will be compensated by payment at the applicable overtime rate, except that compensatory leave will be granted in lieu thereof if:

(A) The employee requests compensatory leave; and

(B) The request is approved.

(f) Fair Labor Standards Act:

(1) Hours worked in excess of 40 hours in 1 week are compensable only if such work is directed, authorized, approved, suffered, or permitted by the Office Head, or his or her designee.

(2) Paid periods of nonwork (e.g., leave, holidays, or excused absences) are not hours of work for the purpose of computing overtime.

(3) Time spent in travel outside of an employee’s normal duty hours for the benefit of the Agency may be compensated as employment, for the purpose of computing overtime, as provided in 5 CFR § 551.422. That is, time spent in travel away from the official duty station is employment pursuant to 5 CFR § 551.422 only when it is:

(A) other than normal home to work travel;

(B) directed, authorized, approved or suffered to be performed outside of the employee’s normal duty hours; and is

(C) otherwise considered hours of work under 5 CFR § 551.422.

(4) Time spent in travel outside of an employee's normal duty hours may also be compensated pursuant to 5 CFR Part 550, Subpart N-Compensatory Time Off for Travel, when such time is not otherwise compensable. The Memorandum of Agreement (MOA) entitled "Compensatory Time Off for Travel," dated October 17, 2005, governs the procedures to follow in implementing compensatory time off for travel pursuant to this section, and the MOA is hereby incorporated by reference into this agreement.

(5) Overtime will be compensated by payment at the applicable overtime rate, except that compensatory leave will be granted if:

(A) The employee would be entitled to the same or greater entitlement under Title 5 of the U.S. Code;

(B) The employee makes a written request for compensatory leave time in lieu of payment; and

(C) The request is approved.⁷⁰

(6) The agency may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any employee for the purpose of interfering with such employee's rights not to request compensatory time off in lieu of payment for overtime hours.

(g) Employees in travel status⁷¹ will not earn compensatory or overtime credit for work performed during the normal hours of the Office but shall continue to earn compensatory or overtime credit in accordance with other provisions of this Section for work performed outside the normal hours of the Office, or for travel which is compensable pursuant to 5 CFR Part 550, Subpart N-Compensatory Time Off for Travel.

⁷⁰ In the event a supervisor or manager intends to offer overtime work with the intent to offer only compensatory time instead of overtime pay, the supervisor or manager must explain to the employee in each instance that the employee may decline the offer and that such declination will not result in any adverse effect to the employee. In this regard, such declination must not result in failure to offer similar opportunities for overtime work on subsequent occasions, or in any other disparate treatment involving assignments, appraisals, or promotional opportunities.

⁷¹ "Travel status" is defined as any day during which an employee is entitled to receive per diem under the Government travel regulations.

(h) Call Back/Holiday Pay. Employees are entitled to appropriate compensation as established by law and government wide rule and regulation for call back overtime work and for holiday work.

(i) Compensation.

(1) When both Title 5 of the U.S. Code and the Fair Labor Standards Act apply to overtime earned, an employee is entitled to whichever benefit is greater.

(2) Overtime which is compensated by payment shall be paid at the applicable overtime rate.

(3) Overtime which is compensated by compensatory leave will be credited in accordance with law and this Agreement to an employee's leave account for later use.

(4) once each quarter, management will provide the "View Comp Time Leave" page of the Federal Personnel/Payroll System to bargaining unit employees who have a compensatory time balance. In addition, employees may obtain compensatory time information by calling NBC, whose number is printed at the bottom of employees' bi-weekly earnings and leave statements.

(j) Compensatory Leave. (1) At no time may an employee accrue compensatory leave credits in excess of 120 hours. If operating needs would result in accrual in excess of 120 hours, the local parties will bargain over how the affected employees will be compensated. Employees are entitled to a reasonable opportunity to take compensatory leave time, consistent with the operating needs of the office, and such leave shall not be denied without just cause.

(2) Employees must use compensatory leave credits by the end of the 26th pay period following the pay period in which the compensatory leave credits were earned;

(3) In the event that employees fail to use the compensatory leave credits prior to the expiration date:

(A) Employees who are not exempt from the FLSA will receive payment for unused compensatory time credits earned in lieu of overtime at the rate of overtime they otherwise would have

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received for hours of the pay period during which compensatory time off was earned by performing overtime work.

(B) Employees who are exempt from the FLSA will forfeit any unused compensatory leave credits at the end of the 26th pay period in which the compensatory leave credits were earned, unless they were prevented from using the leave due to an exigency of the service beyond their control. In such case the employee will receive payment for the unused credits at the employee's rate of pay at the time the compensatory leave credits were earned.

(4) In the event that employees separate from the Agency without using earned compensatory leave credits:

(A) Employees who are not exempt from FLSA will receive payment in an amount equal to the overtime pay that the employee would have received for the particular hours during the week in which the compensatory leave credits were earned.

(B) Employees who are exempt from FLSA will forfeit the unused compensatory time, unless they are separating to perform service in the uniformed services or due to on-the-job injury where the employee is entitled to receive compensation under the FECA. In such cases, the employee will receive pay for the unused credits at the employee's rate of pay at the time the compensatory leave credits were earned.

(k) Compensatory Time Off for Religious Observances: An employee whose personal religious beliefs require the abstention from working during certain periods of time, may elect to engage in overtime work for time lost for meeting those religious requirements. To the extent that such modifications in work schedules do not interfere with the efficient operation of an office, the supervisor shall in each instance afford the employee the opportunity to work compensatory overtime and shall in each instance grant compensatory time off to the employee requesting such time off for religious observations when the employee's personal religious beliefs require that the employee abstain from work during certain periods of the workday or workweek. The employee may work such compensatory overtime before or after the grant of compensatory time off. A grant of advanced compensatory time off should be repaid by the appropriate amount of compensatory overtime work within a reasonable amount of time. The premium pay

provisions for overtime work in Part 550 of Title 5 Code of Federal Regulations and Section 7 of the Fair Labor Standards Act, as amended, do not apply to compensatory overtime work performed by an employee for religious observances.

Section 2. Gliding Flex Schedule. (a) General. Subject to the other terms of this Article, and in accordance with 5 U.S.C. § 6101, employees may work a Gliding Flex schedule, as described below.

(b) Definitions. (1) Core Hours—The normal core hours of Office operation will be 2 hours after the time the Office normally opens for business to 2 hours before the time the Office normally closes for business.

(2) Flexible Band—The flexible bands will be the 4-hour periods immediately preceding and following the core hours in each Office.

(3) Credit Hours—Any hours, as limited below, within a flexi-time schedule which are in excess of an employee's basic requirement and which the employee elects to work so as to vary the length of a workweek or a workday.

(c) Limitations. (1) Employees working a 5-4-9 schedule under Section 4 of this Article are not eligible to work a Gliding Flex schedule.

(2) A Gliding Flex schedule will not be available to employees serving in their first year of employment with the Agency, employees on leave restriction,⁷² employees whose rating of record is less than "Fully Successful" and whose return to normal office hours is reasonably warranted to improve the employee's performance,⁷³ or to employees working under a Performance Improvement Plan unless determined otherwise by the Office Head.

(3) Employees who have been disciplined for misconduct may be removed from a Gliding Flex work schedule only where management establishes and documents a nexus between the fact that

⁷² The fact that an employee must provide medical documentation in accordance with Agency leave policies does not, standing alone, constitute leave restriction.

⁷³ The removal of an employee from a Gliding Flex schedule for the above-stated reason shall only be considered timely grieved if the grievance is filed within 15 working days of the employee's removal from a Gliding Flex schedule. The filing of such a grievance shall not operate to stay the employee's removal from a Gliding Flex schedule.

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the employee is working a Gliding Flex work schedule and the particular misconduct underlying the discipline.

(4) A Gliding Flex schedule will not be available to employees while participating in conferences, training programs, or the Washington Exchange Program.

(5) Employees who are detailed to other offices will only be eligible for a Gliding Flex schedule in accordance with the program as implemented in the office to which the employee is detailed.

(6) The Office Head may temporarily modify an employee's work schedule in order to meet the operating needs of the office, including requiring an employee on a Gliding Flex schedule to begin or end the work day at earlier or later times than previously scheduled, provided that management gives the employee appropriate advance notice of the modification and considers the adverse impact caused by the modification before making a decision to modify the schedule.

(7) Credit Hours Limitations:

(A) An employee working full-time may earn up to 4 credit hours per day, which hours must be used by the end of the pay period following the pay period in which they were earned. No more than 18 credit hours may be accrued at any one time.

(B) Employees electing to work credit hours must work such hours during the period which begins no earlier than the starting of the morning flexible band and the ending of the afternoon flexible band.

(C) Employees who elect to work credit hours must receive advance approval. In addition, once credit hours are earned, an employee must receive approval to use such hours.

(D) Employees may use credit hours only in blocks of 4 hours or less. However, rare requests for use of credit hours in a block of up to 8 hours can be approved at the discretion of the Office Head. It is understood that it is not the intent of this provision to permit a compressed schedule.

(d) Employee Requests.

- (1) Each employee may request a Gliding Flex schedule.
- (2) No employee will be required to work a Gliding Flex schedule.
- (3) Gliding Flex Schedules may commence at any time within the morning flexible bands and will consist of 8 work hours each day for a total of 40 hours each week. Employee requests for a Gliding Flex schedule will be granted to the extent consistent with the operating needs of the Office.

Section 3. Maxi-flex Schedule. (a) General. Subject to the other terms of this Article, and in accordance with 5 U.S.C. § 6101, employees may work a maxi-flex schedule, permitting them to vary their start and stop times, and may work fewer than 10 days per two-week pay period so long as the 80 hour per pay period requirement is met.

(b) Definitions. (1) Core Hours—The normal core hours of Office operation will be 2 hours after the time the Office normally opens for business to 2 hours before the time the Office normally closes for business.

(2) Flexible Band—The flexible bands will be the 4-hour periods immediately preceding and following the core hours in each Office.

(3) Credit Hours – Credit Hours are any hours worked in excess of 8 hours in a day, except for authorized overtime hours. Credit hours may be used within a pay period to bring daily total hours worked to 8 or bi-weekly total hours to 80, but may not be carried from pay period to pay period.

(c) Limitations. (1) Employees working a 5-4-9 schedule under Section 4 of this Article are not eligible to work a maxi-flex schedule.

(2) A maxi-flex schedule will not be available to employees serving in their first year of employment with the Agency, employees on leave restriction,⁷⁴ employees whose rating of record is less than “Fully Successful” and whose return to normal office hours is

⁷⁴ The fact that an employee must provide medical documentation in accordance with Agency leave policies does not, standing alone, constitute leave restriction.

reasonably warranted to improve the employee's performance,⁷⁵ or to employees working under a Performance Improvement Plan unless determined otherwise by the Office Head.

(3) Employees who have been disciplined for misconduct may be removed from a maxi-flex work schedule only where management establishes and documents a nexus between the fact that the employee is working a maxi-flex work schedule and the particular misconduct underlying the discipline.

(4) A maxi-flex schedule will not be available to employees while participating in conferences, training programs, or the Washington Exchange Program.

(5) Employees who are detailed to other offices will only be eligible for a maxi-flex schedule in accordance with the program as implemented in the office to which the employee is detailed.

(6) The Office Head may temporarily modify an employee's work schedule in order to meet the operating needs of the office, including requiring an employee on a maxi-flex schedule to begin or end the work day at earlier or later times than previously scheduled, provided that management gives the employee appropriate advance notice of the modification and considers the adverse impact caused by the modification before making a decision to modify the schedule.

(d) *Maxi-flex Schedule.* Arrival time, departure time, number of hours worked per day and number of days worked per pay period all may vary so long as the biweekly requirement of 80 hours is met.

(1) Employees select a starting time each day, e.g., 8:00 a.m. However, the employee may change the starting times daily within the established flexible bands for the particular office.

(2) Employees may not work more than 10 hours in a maxi-flex day, exclusive of lunch period. Overtime hours in excess of 10 hours a day may be worked, consistent with Section 1 of this Article.

⁷⁵ The removal of an employee from a maxi-flex schedule for the above-stated reason shall only be considered timely grieved if the grievance is filed within 15 working days of the employee's removal from a maxi-flex schedule. The filing of such a grievance shall not operate to stay the employee's removal from a maxi-flex schedule.

(3) An employee working full-time may earn up to 2 credit hours per day until he or she has reached 80 hours in the pay period. Thereafter, additional hours worked will be paid as compensatory time or overtime consistent with the provisions of this article and applicable law and government-wide rule and regulation.

(4) Employees must work at least the core hours or use at least 4 hours leave on each of 8 days in a pay period. Sick leave, annual leave, compensatory leave, and holiday leave⁷⁶ may be used to satisfy this requirement, but credit hours may not.

(e) Employee Requests. (1) Each employee may request a maxi-flex schedule.

(2) No employee will be required to work a maxi-flex schedule.

(3) Maxi-flex Schedules may commence at any time within the morning flexible bands. Employee requests for a maxi-flex schedule will be granted to the extent consistent with the operating needs of the Office.

(A) One third of employees eligible to participate in any alternative work schedule may participate in a maxi-flex schedule four months after this contract goes into effect.

(B) Two thirds of employees eligible to participate in any alternative work schedule may participate in a maxi-flex schedule eight months after this contract goes into effect.

(C) All eligible employees may participate in a maxi-flex schedule one year after this contract goes into effect.

(D) Until one year after this contract goes into effect, maxi-flex requests will be granted in the order of greatest seniority, as determined locally.

Section 4. Compressed Hours—5-4-9 Schedule. (a) General. Subject to the other terms of this Article and consistent with applicable law and government-wide rule and regulation, employees may work a compressed

⁷⁶ Consistent with Federal regulations, employees will be paid eight hours on a holiday.

hours schedule of eight 9-hour days and one 8-hour day in each pay period (5-4-9 schedule).

(b) *Limitations.* (1) A 5-4-9 schedule will not be available to employees working a Gliding Flex or maxi-flex schedule under Sections 2 or 3 of this Article.

(2) A 5-4-9 schedule will not be available to part-time employees, employees serving in their first year of employment with the Agency, employees on leave restriction,⁷⁷ employees whose rating of record is less than "Fully Successful" and whose return to normal office hours is reasonably warranted to improve the employee's performance,⁷⁸ or to employees working under a Performance Improvement Plan unless determined otherwise by the Office Head.⁷⁹

(3) A 5-4-9 schedule will not be available to employees participating in conferences, training programs, or the Washington Exchange Program.

(4) Employees who are detailed to other offices will only be eligible for a 5-4-9 schedule in accordance with the program as implemented in the office to which the employee is detailed.

(5) No employee will be required to work a 5-4-9 schedule.

(d) *Starting Time.* (1) Employees will begin their 8-hour day either at the beginning of the normal office hours or at their 9-hour day starting time.

(2) Employees will begin each of their 9-hour days at the same starting time. Employees may select as the starting time for each of their 9-hour days either the beginning of the normal office hours, or any 1/4 hour interval before the beginning of the normal office hours, up to 1 hour before the beginning of the normal office hours.

⁷⁷ The fact that an employee must provide medical documentation in accordance with Agency leave policies does not, standing alone, constitute leave restriction.

⁷⁸ The removal of an employee from a 5-4-9 schedule for the above-stated reason shall only be considered timely grieved if the grievance is filed within 15 working days of the employee's removal from a 5-4-9 schedule. The filing of such grievance shall not operate to stay the employee's removal from a 5-4-9 schedule.

⁷⁹ See Article 14, Section 1(c) regarding use of leave without pay to regularly alter a compressed work schedule.

Section 5. Employee Requests. (a) The number of eligible employees who may be out of the office on each particular day of the pay period as part of a 5-4-9 schedule, regular telework schedule, or maxi-flex day(s) off will be determined by the operating needs of the office and any local agreement.

(b) Requests of all employees for 5-4-9 schedule days off shall be granted before requests of employees for telework days, which shall be granted before requests for maxi-flex day(s) off. Within each category, the requests shall be granted on the basis of the greatest seniority as determined locally.

(c) 5-4-9 Requests. (1) Employees may request a specific 5-4-9 schedule. Employees requesting a 5-4-9 schedule will include a starting time for their 9-hour days, a starting time for their 8-hour day, what is their desired 8-hour day, and a specific day off.

(2) In the event more employees request to work a particular 5-4-9 schedule than can be accommodated, such employee requests will, consistent with operating needs, be granted in the order of greatest seniority (as determined locally), absent a compelling personal hardship. In the event a particular schedule cannot be accommodated, Management will offer the employee alternate 5-4-9 schedules that can be accommodated.

(d) After all employees have chosen their 5-4-9 schedules, eligible employees will be permitted to choose their regular telework days. Consistent with the provisions of this Section, requests for particular days to telework shall be granted on the basis of the greatest seniority as determined locally.

(e) Employees may request a permanent modification of their 5-4-9 schedules or regularly scheduled telework days⁸⁰ after they have worked four pay periods on their existing schedules or sooner where there is a compelling personal hardship. At any time, employees who are not currently participating in the telework or 5-4-9 programs may also submit their requests for 5-4-9 schedules or telework days. Management will respond to requests for schedule modifications and new schedules within two business

⁸⁰ Employees requesting a permanent change of their regularly scheduled telework days must submit a new telework agreement pursuant to Article 34, Section 4(h)(9).

days and will grant them provided the requested days are available pursuant to the terms of this Article. The requested changes will be effective at the beginning of the pay period after they are granted.⁸¹ In the event that multiple requests are received and not all can be granted, an earlier filed request shall have priority over a later filed request. If filed on the same day, 5-4-9 requests shall have priority over telework requests. If both requests are for telework or both are for 5-4-9, then they will be awarded on the basis of seniority as determined locally.

(f) **Maxi-flex Requests.** (1) Employees who wish maxi-flex day(s) off will submit their requested day(s) off to the Office Head or his or her designee by the close of business on the first Friday of the pay period preceding the pay period in which the day off will occur. Management will respond to such requests no later than 12 noon of the following Wednesday. Such requests will be granted consistent with the terms of this Article and in the order of greatest seniority (as determined locally), absent a compelling personal hardship.

(2) An employee denied a maxi-flex day or days off may submit a request for another day or days off no later than close of business on the last Thursday of the pay period preceding the pay period in which the day off will occur. Such requests will be granted, consistent with the terms of this Article, in the order of greatest seniority as determined locally, absent a compelling personal hardship. Employees will be notified of the granting or denial of their requests no later than close of business on the Friday prior to the beginning of the pay period. Requests made after these dates may be granted at management's discretion.

Section 6. Modification of Alternative Work Schedules. (a) Except as otherwise provided in Section 5(e) above, employees may request a modification of their alternative work schedules to become effective at the beginning of any pay period after they have worked four pay periods on their existing schedule or sooner where there is a compelling personal hardship. Requests for modification should be received by management no later than the Monday preceding the effective date of the change. This Section does not preclude employees from returning their work schedule to normal office hours prior to the completion of the four pay periods.

⁸¹ Except in cases of compelling personal hardship, the effective date may be delayed for a maximum of one pay period if the requested schedule is unavailable because of prior commitments made for a maxi-flex day or days off.

(b) When a particular work assignment involving an individual not employed by the Agency requires an employee's attendance during normal Office hours which are outside his or her alternative work schedule, the employee shall notify his or her supervisor as far in advance as practicable. Management may modify the employee's work schedule to the extent necessary to insure the employee's presence during that time.

Section 7. Recording of Arrival and Departure. Employees working a Gliding Flex schedule or a maxi-flex schedule, or a 5-4-9 schedule, will record their arrival and departure in the office at the commencement and end of their workday by signing a list on each occasion and noting their actual times of arrival and departure. The forms for this purpose will be supplied by management.⁸²

Section 8. Overtime Under Gliding Flex, Maxi-flex, and 5-4-9 Schedules. Overtime accrual and compensation for employees working a Gliding Flex schedule, or maxi-flex schedule, and overtime compensation for employees working a 5-4-9 schedule shall be in accordance with Section 1 of this Article. Overtime accrual for employees working a 5-4-9 schedule shall be in accordance with applicable law.

Section 9. Local Negotiations. It is understood that certain positions require coverage during normal Office hours. Office management will consult and to the extent required by law, bargain with the Local Union regarding positions and/or job functions to be designated in this category and will bargain to the extent required by law regarding the impact of these designations upon affected employees and the procedures to be used in covering these functions in order to permit, if possible, those employees to work any alternative work schedule. The failure of the parties to reach agreement with respect to such coverage will not serve to deny other employees an opportunity to work an appropriate Gliding Flex, maxi-flex, or 5-4-9 schedule.

Section 10. Employee Request for Temporary Adjustment of Employee's Work Schedule. Upon request of an employee made to the Office Head with reasonable notice, the Office Head may temporarily modify or adjust an employee's work schedule, including an employee working a Gliding Flex,

⁸² Employees working a Maxi-flex Schedule who are working out of their office on a particular day (field or telework) shall notify their supervisor no later than the beginning of core hours for their office the next workday of the hours they worked the previous day.

maxi-flex or compressed hours schedule, in order to meet the requirements of work or to accommodate the needs of the employee, including, but not limited to, family friendly needs.

Section 11. Disapproval or Temporary Adjustment of Maxi-flex Day Off. If the Office Head determines that allowing an employee to be absent from the office due to a day off in the case of an employee on a Maxi-flex schedule would preclude operational needs from being met, then the Agency may decline to approve that day off or, if previously approved, cancel or change the day off and direct that the employee report to work. The disapproval or cancellation or change of such days off will be done only if reasonable alternatives are not available that would meet operational needs. The exercise of management discretion under this paragraph is expressly understood to be subject to challenge in the negotiated grievance and arbitration procedures. If operational needs require disapproval, cancellation, or change pursuant to this Section, priority will be given to preserving first employees' days off pursuant to 5-4/9 schedules, then preserving regularly scheduled telework days that have been approved, and last preserving days off pursuant to Maxi-flex schedules.

ARTICLE 22
PART-TIME EMPLOYMENT

Section 1. Upon request, employees will be advised of the opportunities for part-time employment, including job sharing, and the effects of such employment upon existing benefits by furnishing the employee(s) with a copy of "Guidelines for Part-Time Employment."

Section 2. Employees making a request for part-time employment shall do so in writing to the Office Head⁸³ and are required to state the reasons for the same in order to determine whether the reasons are consistent with the Federal Employee Part-Time Career Employee Act of 1978 (P.L. 95-437), other law, applicable government-wide rule or regulation and this Agreement.

Section 3. The Agency shall consider employee requests for part-time employment and make a decision within reasonable time of receipt. Management will consult with employees regarding their particularized requests, and any modifications of requests prior to any denial. Upon the request of the employee, the NLRBU may represent the employee in any such consultation regarding the employee's request for part-time employment.

Section 4. (a) In deciding whether to grant, modify, or deny an employee's request for part-time employment, management will consider whether budget or staffing considerations and/or the operating needs of the office involved preclude an employee from working a part-time schedule.

In the event a request to work a part-time schedule is denied, the reasons therefore will be provided to the employee in writing.

(b) In the event budget or staffing considerations and/or the operating needs of the office involved limit the number of employees who may work a part-time schedule to fewer than the number of employees whose requests for part-time employment have been approved, absent compelling personal reasons of an affected employee, employees will be converted to part-time employment in the order in which they requested to work a part-time schedule.

⁸³ "Office Head" means Regional Director, Division Head, Branch Chief, Board Member or Board Member's Chief Counsel, as applicable.

Section 5. Absent a prior agreement as to the duration of an employee's part-time status, a part-time employee who so desires will be permitted to return to the first available full-time position to which the employee may be noncompetitively assigned.⁸⁴ If more part-time employees desire to return to such full-time positions than are available, the employees will be converted to full-time status in the order in which they requested the conversion. An "available full-time position" is a permanent full-time vacancy that the Office or Region is authorized to fill. In the absence of a specific authorization to hire, management will determine whether an employee may return to a full-time schedule based on budget or staffing considerations and the operating needs of the office involved. Operating needs include the projected workload of the Office or Region (including interregional assistance) and any personal considerations disclosed by the employee. Management's determination shall not be based on arbitrary or unreasonable considerations.

Section 6. The Agency agrees there will be no discrimination in the selection, reclassification, promotion, transfer, or reassignment of employees or in any other terms and conditions of employment because of an employee's part-time schedule. However, if the employee's part-time schedule reasonably warrants treatment different from that accorded full-time employees, that difference in treatment shall not constitute discrimination. In addition, it is recognized by the parties that, consistent with "Guidelines for Part-Time Employment" part-time employees may be treated differently from full-time employees in certain respects.

Section 7. Employees working a part-time schedule may have flexible starting times at the discretion of the Office Head.

⁸⁴ This does not affect the right of an employee, working a part-time schedule to bid on full-time competitive positions. However, if selected, management can require such an employee to return to full-time status.

Guidelines for Part-Time Employment

The Federal Employees Part-Time Career Employment Act of 1978 (P.L. 95-437, 5 U.S.C. 3401-3408; 5 C.F.R. Part 340) defines part-time employment in the Federal Government to cover employees who work a regular schedule ranging from 16 to 32 hours per week or 32 to 64 hours bi-weekly. The statute covers persons with career or career-conditional appointments or permanent appointments in the excepted service who have been employed on a permanent part-time basis on or after April 8, 1979. The federal policies on part-time employment do not apply to temporary or intermittent employees or to permanent part-time employees working schedules of less than 40 hours/week prior to April 8, 1979.

The purposes of part-time employment as expressed in the statute are:

(A) To provide older individuals with a gradual transition into retirement;

(B) To provide employment opportunities to handicapped individuals or others who require a reduced workweek;

(C) To provide parents opportunities to balance family responsibilities with the need for additional income;

(D) To benefit the students who must finance their own education or vocational training;

(E) To benefit the Agency as an employer, by increasing productivity and job satisfaction, while lowering turnover rates and absenteeism, offering management more flexibility meeting work requirements, and filling shortages in various occupations; and

(F) To benefit society by offering a needed alternative for those individuals who require or prefer shorter hours (despite the reduced income), thus increasing jobs available to reduce unemployment while retaining the skills of individuals who have training and experience.

While part-time employees must work a regular schedule within the 16 to 32 hour range, they may work for a limited time in excess of 32 hours per

week to meet demands of workload, travel, training or special assignment needs. While management may temporarily vary schedules, increases in hours above the 32 hour mark generally may not extend beyond two pay periods.

Effects of Converting to Regularly Scheduled Part-Time Work

1. Earnings: Gross pay is computed by multiplying an employee's hourly rate by the number of hours worked in a pay period.

2. Overtime: Under Title 5 USC, hours of work must be in excess of 40 hours in an administrative work-week or 8 hours in a day to be considered overtime. Under the Fair Labor Standards Act, overtime is earned after 40 hours of work in a week, excluding holidays and paid leave.

3. Religious Observances: Part-time employees requesting time off for religious observances may modify their work schedules or elect to earn compensatory leave to the extent that such modification in work schedules do not interfere with the efficient accomplishment of the Agency's mission. The employee may work such compensatory time before or after the grant of compensatory time off, but the compensatory time off must be repaid within a reasonable amount of time.

4. Service Credits: Permanent part-time employees receive a full year of service credit for the purpose of computing:

- retirement
- date of career tenure
- completion of probationary period
- within-grade increases
- change in leave category
- time in grade restrictions on advancement

5. Crediting Experience for Qualification Requirements: Part-time experience is credited on a pro-rata basis according to the relation it bears to a full work-week

6. Leave:

- Sick leave is earned at the rate of one hour for each 20 hours worked.

- Annual leave is earned on a pro-rata basis according to the number of hours worked and the length of government service.
- Military leave is earned on a pro-rata basis. See 5 USC 6323(a)(2)
- Other leave categories (e.g. Absence Without Leave, Leave Without Pay, Court Leave, Funeral Leave, Excused Absences) are not affected.

7. Holidays: Holiday pay is received only if the employee is regularly scheduled to work on that day, and only for those hours that the employee is scheduled to work.

8. Retirement: Annuities are based on an employee's length of service and the highest average annual pay received for any 3 consecutive years. However, the part-time and full-time service since 1985 will be added together for proration factor that reflects the difference between full-time and part-time service. This proration factor is used to compute the annuity benefit for service after 1986.

9. Life Insurance: The actual amount of insurance for which an employee is eligible is based on annual salary which for a part-time employee is the basic pay applicable to the tour of duty. It cannot be lower than the \$10,000 minimum insurance amount.

10. Health Benefits: Coverage is the same as that provided for full-time employees. However, the government's share of insurance premiums will be paid by the employee on a pro-rata basis. For Instance, a part-time employee working 20 hours a week will pay his or her share of the premium, plus 50% of the government's share; an employee working 32 hours a week will pay his or her share of the premium, plus 20% of the government's share.

11. Contract Benefits: All the terms and conditions of the collective-bargaining agreements between the Agency and the NLRB Union remain fully applicable except:

- (a) Article 8 (Both Contracts)

The time periods set forth for promotion in these articles shall be extended on a pro-rata basis. An employee's regular part-time schedule (e.g. a GS-11 Field Examiner who is regularly scheduled

ARTICLE 22

to work 20 hours a week) would be eligible for consideration for promotion to a GS-12 in 2 years.

(b) Article 8, Part C, Section 4

An employee on a part-time schedule will receive an immediate temporary promotion when it is reasonably expected that the employee will be temporarily assigned to a higher graded position for a period of 21 calendar days or longer, regardless of the number of hours worked per day.

(c) Article 14, Section 2 (Both Contracts)

The total amount of sick leave advanced to a part time employee may not exceed a pro-rated percentage of 240 hours, based upon the employee's regular schedule.

(d) Article 21, Section 1(j) (Both Contracts)

The amount of compensatory time that a part-time employee may accrue or carry forward will be pro-rated based upon the number of hours the employee is regularly scheduled to work. Part-time employees are in the same position as full-time employees with respect to earning compensatory time unless provided otherwise by local agreement.

12. Additional Effects:

(a) When in travel status, employees will be required to work a full-time schedule, unless the employee and his/her supervisor agree otherwise.

(b) All Bridge participants must work full-time.

(c) While participating in the Washington Exchange Program, employees will be expected to work full-time.

(d) Employees whose requests have been granted to attend conferences, symposia or institutes, in accordance with Article 7 Section 3 of both agreements will be in duty status for the period of time that they were scheduled to be on official duty.

ARTICLE 23
HEALTH AND SAFETY

Section 1. General. The health and safety of employees is a priority of the Agency. In accordance with law and government-wide rule and regulation, and the Agency Occupational Safety and Health Program, management shall continue to take reasonable steps to provide and maintain during the normal duty hours of the office,⁸⁵ safe and healthful working conditions which shall include the appropriate temperature, humidity, and lighting levels required by the General Service Administration (GSA) and fresh air ventilation rates as followed by GSA (herein "environmental standards"), appropriate physical surroundings and reasonable space and equipment necessary to carry out official responsibilities in an atmosphere conducive to work. When environmental standards are not met, the Agency will allow employees to work in an alternate location, or, if no suitable alternate location is available, grant administrative leave if it does not appear that environmental standards will be restored within a reasonable period of time.

Section 2. Environmental and Safety Hazards. Management shall, to the extent possible and reasonable, comply with appropriate environmental standards issued by the applicable governmental authority to ensure that employees are protected from environmental hazards. The general safety and health responsibilities of the Agency are as delineated in the poster entitled "Occupational Safety and Health Protection for National Labor Relations Board Employees." In the case of an emergency (e.g., fire, bomb threat, act of God), management shall take reasonable steps to ensure the protection of employees including, if necessary, their relocation when hazards exist which reasonably cause an actual impairment of health or safety.

Section 3. Facilities for the Disabled. Management shall take reasonable steps to ensure that disabled employees have access to the Agency facilities, and that they have appropriate ingress and egress to buildings. Additionally, assistance will be provided to disabled employees in evacuating the buildings in case of emergency.

Section 4. Health Services. The Agency will permit employees reasonable opportunity to visit Agency-authorized health service units for emergency and appropriate health maintenance care. Where approved, such visits will

⁸⁵ This does not preclude local parties from bargaining concerning environmental standards during other hours employees are working in the office.

be permitted without charge to annual leave, compensatory leave, or leave without pay.⁸⁶ Each Region will actively publicize the medical services, such as flu vaccinations, cholesterol screenings, and diabetes screenings, available to employees from the Department of Health and Human Services.

Section 5. Occupational Safety and Health Program. In accordance with the law and government-wide rule and regulation (including Executive Order 12196 and 29 CFR § 1960), the NLRBU will be entitled to participate in the Agency's Occupational Safety and Health Program. Such participation shall be on official time.

*Section 6. Advisory Committee on Health and Safety.*⁸⁷ A management-union Advisory Committee on Health and Safety will be established and will meet on a semi-annual basis. Of the two committee meetings, one will be in person in headquarters and one will be conducted by videoconference. The Committee shall consist of two management representatives and two NLRBU representatives. NLRBU representatives on the Committee shall be on official time in accordance with Article 28. Section 4. Arrangements for any additional meetings will be by mutual agreement of the parties. Subject to budgetary and staffing considerations, NLRBU members of the committee will be permitted to take training if the course or seminar is related to the performance of their duties on the committee. The application to take such training, and its processing and approval, will be in accord with the procedures of Article 7. The time spent in such training, including reasonable travel time, shall be duty time. The obligation of the Agency pursuant to this paragraph is limited to no more than \$2,500 (aggregate cost of the training and any travel and per diem costs) and no more than 48 hours (inclusive of compensated travel time) to any individual committee member in a 24 month period. The training provided pursuant to this paragraph is in addition to the right of committee members to apply and be approved for training unrelated to the operation of the committee and the costs associated with training provided pursuant to this paragraph are not to be included as part of the overall limits on training costs for the bargaining unit noted in Article 7.

Section 7. Right to Know. (a) Management agrees to evaluate chemicals used by employees to determine the hazards associated with their routine usage, to

⁸⁶ The Agency agrees to distribute on an annual basis an administrative policy circular dealing with the subject matter of AIDS.

⁸⁷ It is understood that the committee is not the Occupational Safety and Health Committee contemplated by Executive Order 12196 and 29 CFR § 1960.36.

maintain a Material Safety Data Sheet (MSDS) for each hazardous chemical for review by employees and to train employees who are exposed or potentially exposed to hazards from chemicals procured by the Agency on the safe use of such chemicals, as set forth in the Agency's Hazard Communication Program (AB 94-54), as it may be modified by mutual agreement of management and the Union.

(b) When the Agency knows that hazardous chemicals will be used in the buildings where it occupies offices, it will notify the Local Union as well as the employees. To the extent possible, the notice will be given 1 full workday before the hazardous chemicals are to be used.

(c) Where the Agency determines there is a reasonable likelihood of harm, employees will be allowed to move to safe areas designated by management while their area is contaminated.

Section 8. Dangerous Conditions. (a) Consistent with 29 CFR § 1960.46, an employee may remove himself or herself from an imminently dangerous condition by moving to a safer or healthier location. When the employee has not received the Agency's permission to do this prior to moving, the employee will immediately notify the Agency of his or her action and continue to make himself or herself available for work at a location designated by management.

(b) An employee has the right to decline to perform his or her assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm, coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures. Management and the NLRBU local may develop alternative methods or means of performing the work.

Section 9. Assistance When Ill or Incapacitated. When it necessary for an employee to leave work and return home because of illness or incapacitation, the Agency will make reasonable efforts to assist in locating transportation for the employee. If such assistance is found and is to be rendered by an employee, the Agency will allow a reasonable amount of time to the employee transporting the sick employee for this task to be accomplished. The parties recognize that the Agency's monetary, tort, or pecuniary liability is governed by Federal Court decisions. The Agency assumes only that responsibility or liability imposed by law, regulation, or such decisions.

Section 10. Federal Employee Compensation Act. When an employee is injured in the performance of his or her duties, and the Agency is aware of it, he or she will be informed by the Agency of the procedures for filing a claim for benefits under the Federal Employee Compensation Act. Information will be provided about the type of benefits available.

Section 11. VDTs (Video Display Terminals). (a) All VDT equipment provided by the Agency for use by employees will conform with appropriate governmental specifications and standards, and will be properly installed and maintained. VDT equipment and related furniture and accessories shall comply with the terms of the "VDT Equipment Settlement Agreement" (OM 92-25) as amended in the "Ergonomic Chair Settlement Agreement" of October 14, 1994.

(b) Employees assigned to VDT work will be provided training, as appropriate, in the proper use of the equipment.

(c) VDT work scheduling will be in conformance with Administrative Bulletin 85-19 (AB 85-19) issued April 15, 1985.

(d) Should competent medical authority find that an employee's continued work on VDT equipment may potentially result in damage to his or her health, including pregnancy, the Agency will attempt to reasonably accommodate such employee through reassignment to other appropriate work.⁸⁸

Section 12. Asbestos. (a) The Agency will not relocate any current facility or establish any new facility in a structure which contains asbestos containing building materials, to the extent that the selection of the facility is within the control of the Agency. A relocation does not include the movement of an office within the same building.

(b) (1) All present NLRB facilities identified as containing asbestos will be tested for air concentration levels on an annual basis utilizing the PCM 239 or NIOSH 7400 methods. During annual air sampling, the air samples will be obtained from locations within the confines of the NLRB facility being tested. The annual testing shall be conducted in May. Surface wipe samples may be obtained at the same time and submitted for analysis together with the air samples. In the event any test reveals a level not

⁸⁸ The Agency reserves the right to consider the views of Agency designated medical authority and the views of Federal health agencies in making determinations.

exceeding .01 fibers per cubic centimeter, no further testing will be done until the next annual test.

(2) Additional testing may also be conducted daily while asbestos abatement projects are in progress in other areas of the building serviced by a single ventilation system. Similarly, asbestos testing may be conducted following natural disasters such as earthquakes.

(c) (1) In the event any test reveals a level higher than .01 fibers per cubic centimeter but less than .075 fibers per cubic centimeter, additional phase contrast air quality samples will be taken to attempt to discover the extent of the situation, the source of the contamination, or other relevant factors.

(2) In the event any test reveals a fiber concentration level of .075 fibers per cubic centimeter or above in space occupied by the Agency, the air sample in question will be subjected to electron microscopy testing to determine the concentration of asbestos fibers as defined by OSHA standards and to determine what corrective measures are necessary.

(d) Should the exposure requirements of OSHA and GSA vary in the future, management will consult, and to the extent required by law, negotiate with the NLRBU prior to implementation.

(e) Where asbestos is deemed to be in questionable or deteriorating condition, a program will be developed in order to monitor the condition of the asbestos.

(f) Should the Agency vacate space occupied by it during an asbestos abatement or removal project, following the abatement or removal, the Agency will ascertain that the GSA re-occupancy level of .01 fibers per cubic centimeter has been met before the space is reoccupied.

Section 13. Indoor Air Quality In Reconfigured Space.⁸⁹ (a) To the extent the Agency has discretion, heating, ventilation, and air conditioning (HVAC) systems in reconfigured space and existing space undergoing HVAC system renovations shall meet applicable governmental and industry standards, including standards issued by American Society of Heating, Refrigeration,

⁸⁹ "Reconfigured space," as used in this Article, means facilities which the Agency has newly acquired, relocated, expanded, or consolidated.

and Air Conditioning Engineers, Inc. (ASHRAE). It is agreed that, at the time of this agreement, current industry guidelines require a minimum of 20 CFM/person of fresh (unrecirculated) air.

(b) When there is a reduction of space in an Agency facility, the Agency shall take reasonable steps to assure that the HVAC system continues to meet governmental and industry standards after the space reduction.

(c) For reconfigured space where substantial alterations are made to the HVAC system, a qualified ventilation professional shall develop certified plans that meet applicable government and industry guidelines for indoor air quality.

(d) The Agency shall cause an indoor air quality inspection to be performed by a qualified ventilation professional not more than 90 days following initial occupancy of new space and where substantial renovations are made to Agency field office. The inspector shall evaluate/ascertain, where appropriate, fresh air flow (including distribution); percentage of recirculated air; CO² concentration; CO concentration; HCHO concentration; VOC concentration; presence of bacteria, mold and fungi (bioaerosol and surface) in the field office and HVAC system; and temperature and relative humidity. The inspector shall issue a written report describing his or her findings and recommendations. The Agency shall take effective action to comply with the recommendations to the extent appropriate and feasible.

(e) Prior to the occupancy of reconfigured space by the Agency, appropriate action will be taken to rid the space of noxious fumes and odors to the extent practicable.

(f) To minimize glare and eyestrain among computer users, reconfigured space and existing space undergoing substantial renovations, including lighting system renovations, shall be equipped with parabolic ("egg crate") light fixture louvers and window darkening shades, curtains or blinds, to the extent within the Agency's control.

Section 14. Physical Security. (a) To the extent it is within the control of the Agency, the NLRB will not relocated Agency offices in facilities in which other tenants require security of Level IV as defined in "Facility Security Level Determinations for Federal Facilities" (Interagency Security Committee, February 21, 2008). The Agency will take all reasonable steps to prevent the relocation of other tenants requiring Level IV security into facilities where Agency offices are located.

(b) Prior to the finalization of plans for reconfigured space, a qualified physical security professional shall evaluate the plans and make written recommendations as to what design, equipment, and procedures will minimize the risk of violence (such as explosive devices and physical attacks) to unit employees. Such recommendations will be followed where appropriate.⁹⁰

(c) All new facilities shall be furnished within silent alarm devices which enable the receptionist and information officer to summon emergency assistance from the Federal Protective Service or other appropriate local authorities without the knowledge of the person who may pose a threat. All field facilities will be provided with such silent alarm devices.

(d) An appropriate lock plan will be developed to control access to NLRB space.

Section 15. Cellular Telephones. The Agency will provide cellular telephones for use by employees who leave their to conduct official business. One cellular telephone will be provided to each office with fewer than 25 professional employees after the execution of this Agreement. Two cellular telephones will be provided to each office with 25 or more professional employees after the execution of this Agreement. The use of such telephones will be voluntary. The use of such cell phones is primarily for the safety of employees; any other usage is secondary.

Section 16. Cardio-Pulmonary Resuscitation (CPR). All Agency offices will continue to be furnished with Automated External Defibrillators (AED). Consistent with budgetary considerations, the Agency will provide training in CPR and use of the office's AED so that each Agency office has an adequate number of staff members, normally at least one staff member for every 10 staff members in the office, who have been trained. Consistent with budgetary considerations will be kept current.

Section 17. Nondiscrimination. No employee may be subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of an unsafe or unhealthful working condition to OSHA, other health and safety agencies, or the Agency, or for any other participation in the Agency's Occupational Safety and Health Program activities.

⁹⁰ See Appendix B regarding procedures to assure employee safety in the vicinity of a relocating field office.

ARTICLE 24
EQUAL EMPLOYMENT OPPORTUNITY

Section 1. The Agency and the NLRBU fully support the concept of equal employment opportunity, diversity, and maintaining effective affirmative programs of equal employment opportunity and effective affirmative action programs for employees with disabilities.

Section 2. (a) The Agency agrees, consistent with applicable law and government-wide rule and regulation, there will be no discrimination in the selection, reclassification, promotion, transfer, training, or reassignment of employees or in other terms or conditions of employment because of sex, race, color, creed, age, disabling condition, marital status, religion, national origin, political affiliation, genetic information, or sexual orientation.

(b) Consistent with applicable law and government-wide rule and regulation, the Agency agrees, consistent with Article 4, Section 5(b) of this Agreement, to provide a workplace free from all forms of harassment, including sexual harassment.⁹¹

Section 3. The NLRBU agrees that it will not discriminate with regard to the terms or conditions of membership because of sex, race, color, creed, age, religion, preferential or non-preferential civil service status, political affiliation, disabling condition, marital status, national origin, genetic information, or sexual orientation.

Section 4. The Agency agrees to inform all employees and the NLRBU, at least annually, of the progress in the implementation of the Agency's Equal Employment Opportunity Program. These reports regarding the bargaining unit, which will include the Agency's "Annual EEO Program Status Report" (MD-715 report), its "Annual EEO Statistical Report of Discrimination Complaints" (462 Report) and periodic trend analysis reports rendered by the Equal Employment Opportunity Commission, will be provided to the NLRBU Executive Committee and members of the EEO Advisory Committee and will be posted on the OEEO webpage on the Agency intranet. The NLRBU does not waive its right to request other EEO reports otherwise available to it under applicable law.

⁹¹ The Agency agrees to distribute on an annual basis a policy statement addressing all forms of unlawful harassment, including sexual harassment.

Section 5. Consistent with the terms of this Agreement, Agency-designated EEO counselors will be selected for all Regional and Headquarters offices (including Satellite Division of Judges) in consultation with the NLRBU. Employees will be informed, through a posting in each office and on the Agency's intranet OEEEO webpage, of the counselor responsible for their office; the posting will also inform employees that the employee may request an Agency EEO Counselor from any Agency office to provide assistance. The Agency will advise and train EEO counselors in accordance with EEOC Management Directive MD-110.⁹² When EEO counselors advise employees of their statutory rights, the counselors will also advise employees of the Agency's voluntary ADR program and of the employees' option to use the contractual grievance-arbitration procedure to resolve disputes.

Section 6. The Agency will consult and to the extent required by law, negotiate with the NLRBU in regard to maintaining effective affirmative programs of equal employment opportunity and effective affirmative action programs for employees with disabilities; such programs shall be consistent with law and government rule and regulation.

The affirmative action programs shall also provide for the recruitment, placement, and advancement of qualified disabled persons and disabled veterans. The parties recognize that there may be circumstances where the reasonable accommodation of an employee may require a deviation from the collective-bargaining agreement or Local Supplemental Agreements. In addition, the national parties may, on a case-by-case basis, agree to deviate from a contractual provision to the extent necessary to reasonably accommodate an employee's disability. In any event, if the national parties are unable to reach agreement on an accommodation, each reserves any right otherwise available to it.

Section 7. A management-union EEO Advisory Committee will meet on a semiannual basis to review and report on the progress of fulfilling the goals of EEO and the applicable Agency Affirmative Action Plan(s). Of the two committee meetings, one will be in person in headquarters and one will be conducted by videoconference. The Committee shall review Articles 6 (Training), 11 (Exchange Program), 33 (Transfers), and other pertinent articles of this Agreement with respect to their EEO considerations. The Committee shall report its findings and recommendations to the General

⁹² Employees will not be advised that a person is an EEO Counselor until the Counselor has received the initial training required by MD-110. All EEO counselors will receive training at periodic in-person conferences.

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Counsel and the Board. It shall also make recommendations to the Agency's Director of Equal Employment Opportunity with respect to an educational program for bargaining unit employees.⁹³ Arrangements for meetings will be by mutual agreement of the parties. Additional meetings may be held upon mutual agreement of the parties. The EEO Advisory Committee shall consist of two management representatives and two NLRBU representatives. NLRBU representatives shall be on official time in accordance with Article 28.

Subject to budgetary and staffing considerations, NLRBU members of the committee will be permitted to take training if the course or seminar is related to the performance of their duties on the committee. The application to take such training, and its processing and approval, will be in accord with the procedures of Article 7. The time spent in such training, including reasonable travel time, shall be duty time. The obligation of the Agency pursuant to this paragraph is limited to no more than \$2500 (aggregate cost of the training and any travel and per diem costs) and no more than 48 hours (inclusive of compensated travel time) to any individual committee member in a 24 month period. The training provided pursuant to this paragraph is in addition to the right of committee members to apply and be approved for training unrelated to the operation of the committee and the costs associated with training provided pursuant to this paragraph are not to be included as part of the overall limits on training costs for the bargaining unit noted in Article 7.

⁹³ Management reserves the right to distribute additional training and/or educational material.

ARTICLE 25 RETIREMENT

Section 1. Employees who want to obtain information about their retirement eligibility should contact the Human Resources Branch. The Agency will maintain on the Human Resources webpage of the Intranet contact information for Human Resources representatives who can provide employees with information about their retirement eligibility and options. The role of the Human Resources representative is to provide the employee with information concerning benefits, retirement laws, and other appropriate information. Employees will be advised by the automated Leave and Earnings Statement e-mail message about how to obtain their optional regular retirement eligibility date information from Employee Express.

Section 2. The Agency will provide employees information about local retirement classes. The Agency will also provide in-house retirement training on duty time and will reimburse employees for outside training in accordance with Article 7 of this Agreement. For employees who have applied for early retirement, as soon as practicable thereafter, the Agency will provide individual employees retirement counseling, information concerning benefits, retirement laws, and information regarding local classes, and other appropriate information.

Section 3. An employee who separates voluntarily or involuntarily (except by retirement) will be informed by the Agency of the eligibility for deferred annuity at age 62, provided he or she has at least 5 years of civilian service and leaves his or her money on deposit with the Office of Personnel Management. The Agency will inform an employee of his or her right to file an application for disability retirement, if appropriate, provided the employee has at least 5 years of civilian service. Where appropriate and proper pursuant to government-wide rule and regulation, the Agency will inform an employee who separates involuntarily of his or her possible eligibility for a discontinued service retirement. The Agency will inform the employee that the final determination on discontinued service retirement is made by OPM and not the Agency.

Section 4. An employee may withdraw a retirement application at any time prior to the effective date.

ARTICLE 26
NATIONAL SUPPLEMENTAL AND LOCAL SUPPLEMENTAL
AGREEMENTS

Section 1. National Supplemental Agreements. The parties agree that National Supplemental Agreements involving matters not covered herein may be negotiated and executed from time to time while this General Agreement is in effect. Such National Supplemental Agreements shall terminate in the manner specified in Article 40 (Duration) herein or on such other expiration dates as may be agreed to by the parties in the National Supplemental Agreements.

Section 2. Local Supplemental Agreements. (a) Consistent with the provisions of this Agreement, the parties agree that certain matters have by this Agreement been delegated to the local parties.

(b) Local Supplemental Agreements which are confined to local conditions of employment affecting the employees of a Headquarters Office or Regional Office and which cover matters within the lawfully established administrative authority of the Office Head⁹⁴ or Regional Director, may be negotiated between the Local Union and Office Head or Regional Director. Any such agreement shall be subject to the approval of the [GC CBA: "General Counsel"] [Board CBA: "Chairman"] or his or her designee and the NLRBU President or his or her designee and shall be simultaneously submitted to both parties for approval.⁹⁵ Local Supplemental Agreements are distinguished from other local agreements and will be approved unless any provision:

- (1) Modifies or conflicts with any provision of this Agreement or any supplement hereto;

⁹⁴ In Headquarters, "Office Head" refers to the Division Head, Branch Chief, Office Director, Board Member or Board Member's Chief Counsel, as applicable.

⁹⁵ Local agreements or understandings regarding local policies and procedures negotiated by the Regional Director or Office Head and the appropriate local union need not be submitted for approval pursuant to the provisions of this Article, unless mutual agreement of the local parties to do so exists. No local agreement or understanding, whether submitted for approval under this Article or not, may be in contravention of any provision of this Agreement. Any provision of any local agreement or understanding which could be disapproved under the provisions of this Article shall be of no force and effect.

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- (2) Conflicts with applicable law or government-wide rule or regulation;
- (3) Is inconsistent with the certification of the NLRBU;
- (4) Is not confined to local conditions affecting employees of the Headquarters Office, Region or Subregion covered; or
- (5) Conflicts with lawfully established restraints on the administrative authority of the Office Head or Regional Director.

(c) No Local Supplemental Agreement may be disapproved because it contains provisions relating to matters covered by 5 U.S.C. § 7106(b) or Article 3 (Management Rights and Obligations), Section 2(b).

(d) The negotiation of a Local Supplemental Agreement implementing the provisions of Article 21 (Hours of Work) may not, absent the mutual agreement of the local parties, include other matters extraneous thereto as a condition for implementation.

(e) Any determination by a party to this Agreement that a provision of a Local Supplemental Agreement should be rejected pursuant to this Section will not be made until the other party has been notified and been given an opportunity to consult on the matter. Any consultation will be conducted expeditiously, and will not take more than 60 days to conclude. Local parties may bring to the attention of the national parties potential issues under Section 2(b) or request expedited approval where no such issues exist.

Section 3. (a) If a provision of a Local Supplemental Agreement is disapproved as in conflict with 5 U.S.C. Section 7106(a) or Article 3 (Management Rights and Obligations), Section 2(a), of this Agreement, an arbitrator shall not have the authority to decide this issue.

ARTICLE 26

(b) If a provision of a Local Supplemental Agreement is disapproved as not confined to local conditions affecting employees of the Headquarters Office or Region covered and/or as exceeding the lawfully established administrative discretion of the Office Head or Regional Director, the disapproval shall not preclude the undisputed provisions of the Local Supplemental Agreement from becoming effective in accordance with other provisions of this Article. However, the validity of such provision may be reviewed by an arbitrator.

Section 4. The General Counsel, Chairman and the NLRBU President will approve or disapprove Local Supplemental Agreements no later than 45 days after receipt of the submission of the agreement for approval, or no later than 15 days from the end of the consultations under Section 2(e), whichever period is longer.

Section 5. Except as mutually agreed by the Agency and the NLRBU, all Local Supplemental Agreements shall terminate concurrently with termination of this Agreement, including extension(s) thereof.

Section 6. Grievances concerning the interpretation or application of any Local Supplemental Agreement entered into pursuant to the provisions of this Article may be processed under the grievance and arbitration procedures set forth in Articles 15 and 16 above.

ARTICLE 27
VOLUNTARY DEDUCTION OF UNION DUES

Section 1. In accordance with applicable law and government-wide and Agency rule and regulation, payroll deductions for the payment of NLRBU dues will be made from the pay of employees who voluntarily request such deductions.

Section 2. Any employee desiring to have NLRBU dues deducted from his or her pay may at any time, complete and sign the appropriate portions of NLRBU Form No. 1. Section C of the form shall be completed and certified by the NLRBU Treasurer or his or her designee, who shall forward or deliver it to the appropriate section of the Human Resources Branch. Dues will be deducted effective at the beginning of the first pay period after the employee signs NLRBU Form No. 1. However, the effective date shall not be more than 30 days prior to the date NLRBU Form No. 1 is received by the appropriate section of the Human Resources Branch. The completed form must be received by the Office by the close of business on the Wednesday preceding the ending of a pay period to be processed for that pay period.

Section 3. Authorized deductions will be made each biweekly pay period from the pay of an employee who has requested such allotment for dues in accordance with this Agreement. It is understood that no deduction for dues will be made by the Agency in any period for which the employee's net earnings after other deductions are insufficient to cover the full amount of the allotment for dues.

Section 4. The Agency agrees to arrange with the payroll processing contractor that the dues deducted shall be electronically transmitted by the contractor to the Treasurer of the NLRBU, in accordance with the contractor's disbursement procedures. The Agency further agrees to arrange with the contractor to have the contractor provide to the NLRBU a list from the automated system showing the names and the last four digits of the Social Security numbers of the employees involved, the amount deducted for each employee, and the total amount of dues withheld for the pay period in question; such list shall be sent to the Treasurer of the NLRBU within 2 weeks of the close of the pay period for the pay period in question. In addition, the Agency will provide the NLRBU with a supplemental listing,⁹⁶

⁹⁶ In the event there is a discrepancy in the information that is duplicated on both lists, the contractor list will be considered to reflect the accurate totals.

normally within 2 weeks after the pay day of the applicable pay period, showing the names of the employees, the last four digits of their Social Security numbers, their locations, the amount deducted for each employee, and the total amount of dues withheld for the pay period in question. The Agency will provide the NLRBU with the title of the Agency official responsible for the provision of the supplemental listing and will apprise the NLRBU of any change in such official.

Section 5. Any employee who has authorized the withholding of NLRBU dues may request revocation of such authorization by completion and submission to the appropriate section of the Human Resources Branch of the Agency of Standard Form No. 1188. Upon receipt of a revocation form or request properly completed and signed by an employee, the Agency will discontinue the withholding of dues from the employee's pay, effective the first full pay period after the first anniversary of the employee's execution of NLRBU Form No. 1. However, in the case of an employee who has been on dues check-off for more than 1 year at the time the revocation is received, the Agency will discontinue the withholding of dues from the employee's pay effective the first full pay period after the following March 1. The Agency shall promptly provide the NLRBU Treasurer, applicable District Vice President and the applicable Local President with copies of all such revocations received. The Agency will provide the NLRBU with the title of the Agency official responsible for the provision of the copies of revocations and will apprise the NLRBU of any change in such official.

Section 6. All deductions for NLRBU dues provided for in this Article shall be automatically terminated in the event of loss of exclusive recognition by the NLRBU. Any individual allotment for dues withholding will not be terminated unless an employee ceases to be employed in any bargaining unit represented by the NLRBU.

Section 7. The NLRBU agrees to give prompt written notification to the Agency in the event an employee participating in the dues deduction program has been suspended or expelled from membership in order that the Agency may terminate his or her allotment for dues.

Section 8. The NLRBU shall be responsible for insuring that NLRBU Form No. 1 is purchased and made available to its members and shall insure that the forms are properly completed and certified before transmitting them to the Agency. The NLRBU recognizes its responsibility for seeing that its members are fully informed and educated concerning the program for payroll deduction of NLRBU dues, its voluntary nature,

and the uses and availability of the required form.

Section 9. The NLRBU shall furnish the Agency, at the earliest practicable date, with a current listing of NLRBU officials who are authorized and designated by the Treasurer of the NLRBU to certify Section C of NLRBU Form No. 1 on his or her behalf. The NLRBU shall be responsible for giving the Agency prompt written notification of any change in this information. Changes in the amount of NLRBU dues for payroll deduction purposes shall not be made more frequently than twice in any 12-month period.

Section 10. Office heads or their designees will submit SF-52s to the Human Resources Branch in accordance with OM 07-02, for bargaining unit employees who it temporarily promotes to non-unit supervisory or managerial positions for periods expected to exceed four (4) or more weeks. If the affected employee authorized withholding of NLRBU dues from his or her pay, then the Human Resources Branch, upon receipt of the SF-52, shall temporarily discontinue dues deduction until the employee returns to his or her bargaining unit position when the Human Resources Branch will then reinstate dues deduction.

ARTICLE 28
USE OF OFFICIAL TIME

Section 1. General. Consistent with applicable law, government-wide rule and regulation and this Agreement, the Agency recognizes that in the furtherance of good labor-management relations employee representatives of the NLRBU, and employees represented by the NLRBU, are entitled to official time, as set forth below, to represent and be represented by the NLRBU. The provisions of this Article are intended to reflect the agreement of the parties on:

- (1) Certain statutory entitlements to official time;⁹⁷
- (2) The amounts of official time allowed for certain representational activities;
- (3) How employees are to be released from duty and report official time used; and
- (4) How the work of employees utilizing official time is to be appraised.⁹⁸

Section 2. Prohibition on Performance of Internal Union Business. Consistent with 5 U.S.C. §7131(b), and applicable government-wide rule and regulation, any activities performed by any employee relating to the internal business of the NLRBU shall be performed during the time the employee is in a non-duty status. Examples of internal NLRBU business include, but are not limited to, the following activities: (i) solicitation of membership; (ii) planning or conducting internal NLRBU elections; (iii) preparation of articles for the NLRBU newspaper; (iv) planning, or attending, an internal NLRBU meeting (including an NLRBU convention);⁹⁹ or (v) collection of dues or

⁹⁷ Official time amounts described herein do not limit official time as authorized by 5 U.S.C. §7131(a) and (c). Nor are the amounts set forth in Section 3 intended to affect official time authorized separately for Labor Management Forum participation or pre-decisional involvement pursuant to Executive Order 13522.

⁹⁸ The provisions of this Article are not intended to waive the rights of either party with respect to any NLRBU request to bargain for additional official time for purposes not specifically set forth herein.

⁹⁹ This does not include any time spent in meetings on representational matters or other duty time authorized for convention training pursuant to Article 7 of this agreement.

handling of other internal NLRBU financial matters.¹⁰⁰

Section 3. Amounts of Official Time for Members of the Executive Committee.¹⁰¹ (a) Except for the amounts of official time described in Section 3(b) of this Article, the amounts of official time which members of the NLRBU Executive Committee may use, expressed as a percentage of their work schedules per year of this Agreement are as follows:

(1) Two (2) members of the NLRBU Executive Committee will be entitled to 75 percent official time for representational purposes. Within 10 days of the execution date of this Agreement, and annually thereafter, the Union will advise the Agency as to which members of the Executive Committee have been designated as being on 75 percent official time. These designations may be changed only at the time that the annual notice described above is provided to the Agency, or upon 60-days notice upon a change in individuals on the Executive Committee.

(2) Four (4) members of the NLRBU Executive Committee will be entitled to 40 percent official time for representational purposes.

(3) Official time that is not used by the annual anniversary date of this Agreement will be forfeited and cannot be carried forward for use in any later year.¹⁰²

(b) Excluded from the above amounts are:

(1) Time spent in attendance at negotiations;

(2) Time spent in attendance at arbitration hearings (Section 8(a));

¹⁰⁰ The foregoing shall have the identical meaning as Section 7131(b) of 5 U.S.C. Chapter 71 as interpreted by the FLRA and the courts. Further, "nonduty status" as used in this Article is understood by the parties to mean during the customarily recognized and sanctioned or approved nonwork time of employees.

¹⁰¹ The NLRBU Executive Committee consists of the following six Union officers: President, Executive Vice President, Secretary, Treasurer, Grievance Committee Chairperson, and Support Staff Representative.

¹⁰² To the extent practicable, the use of official time will be balanced throughout the year.

- (3) Time spent in attendance at semi-annual consultations (Section 4(a));
- (4) Time spent responding to Agency-initiated grievances or unfair labor practice charges filed against the NLRBU (Section 7(c)); and
- (5) Time spent in training to improve labor-management relations (Section 11(a)).

Section 4. Consultations and Labor-Management Committee Meetings.

(a) At the National Level.

(1) There shall be regularly scheduled semiannual consultations normally of 2-days' length, unless mutually agreed otherwise, between national officials of the NLRBU, or their designees, and representatives of the Agency.¹⁰³ Up to six representatives of the NLRBU shall be on official time for such consultations. Further, NLRBU representatives shall be granted official time in accordance with Section 13 of this Article, for preparation and follow through relating to such consultations, and this time will be included in the amounts set forth in Section 3(a) of this Article.

(2) The purpose of consultations is to establish and maintain better communications between the parties and to exchange information of mutual interest to settle disputes, and in general, to minimize areas of potential misunderstanding or disagreement.

(3) Designated NLRBU representatives (other than members of the Union's Executive Committee) participating on labor-management committees pursuant to this Agreement (Article 12, Incentive and Performance Awards; Article 23, Health and Safety; Article 24, EEO; and Article 6, Training), shall be on official time for time spent in attendance at such meetings. Annually, designated NLRBU representatives (other than members of the Union's Executive Committee) participating on labor-management committees will participate in only one in-person committee meeting; to complete

¹⁰³ The parties agree that consultations are to occur at approximately 4 to 6-month intervals. The parties agree that this will involve scheduling consultations in the second and fourth quarters of each Fiscal Year, absent mutual agreement to the contrary.

ARTICLE 28.

semiannual consultations, these NLRBU representatives will participate in a second committee meeting by video conference.

(4) (a) The amount of official time for the 6 NLRBU representatives of the three labor-management advisory committees under Articles 6, 23, and 24 of this Agreement shall consist of a bank of 200 hours per year in accordance with Section 13 of this Article for preparation and follow through relating to such labor-management committee meetings. The 200 hour bank does not include additional reasonable amounts, in accordance with Section 13 of this Article, for work on projects agreed upon by the committee, outside of direct preparation and follow through for the meetings.

(b) At the Local Level. (1) Upon request of either party, there shall be at least 1 monthly meeting between local union representatives and representatives of management in addition to any meetings concerning complaints, grievances, and other disagreements. Representatives of the Local Union may include up to the number of management representatives unless the Local Union and management mutually agree to increase the number of representatives, and shall be on official time for such consultations.

(2) In addition, reasonable amounts of official time shall be granted in accordance with Section 13 of this Article, to be deducted from the bank of hours in Section 9, for preparation and follow-through relating to this Subsection.

Section 5. NLRBU Executive Committee members shall be granted official time, from the amounts set forth in Section 3(a), in accordance with Section 13 of this Article, for time spent responding to management requests to review and comment upon proposed management actions, policies, procedures, or communications.

Section 6. Negotiations at the Local Level. To the extent required by 5 U.S.C. § 7131, any employee representing the NLRBU in the negotiation of a Local Supplemental Agreement or in any other negotiations shall be authorized official time for such purposes, including attendance at impasse proceedings, during the time the employee otherwise would be in duty status. The number of employees for whom official time is authorized under this Section and who may participate in negotiations shall not exceed the number of individuals designated as representing the Agency for such purposes.

Section 7. Grievances and Other Disputes.

(a) National Union Representatives.

(1) When a grievance or other dispute in the formal stages reaches the headquarters office or Grievance Committee Chairperson's office, it is expected that most communications will be written or telephonic in nature. When the parties mutually agree that a meeting at such stage of the proceedings might be fruitful, either in Washington, D.C., or the applicable field office, agreed-upon participants shall be accorded official time as mutually agreed by the parties.

(2) If it is mutually agreed that the visit of a designated representative of the NLRBU could result in the resolution of complaints or grievances arising in a particular office, other than his/her own, official time shall be accorded the representative for that purpose.

(3) Management will grant, in accordance with Section 13 of this Article:

(A) Official time from the amounts set forth in Section 3(a) of this Article to members of the NLRBU Executive Committee; and

(B) Reasonable amounts of official time to District Vice Presidents for the purpose of investigating employee complaints or grievances, within their respective areas of responsibility, from their home offices.

(4) In addition, reasonable amounts of official time shall be granted in accordance with Section 13 of this Article to National Union representatives, for preparation and follow through relating to the processing of grievances, except that if such national representative is a member of the NLRBU Executive Committee described in Section 3 of this Article, such time shall be included in the amounts set forth in Section 3(a).

(b) Local Union Representatives. (1) Management shall grant reasonable amounts of official time in accordance with Section 13 of this Article to the grievant, any necessary local union representative(s), and any necessary

witness(es), for the purpose of investigating employee complaints or grievances.

(2) In handling or processing any complaint or grievance, the grievant, his or her representative, any necessary witnesses, and a designated local union representative, if the grievant's representative is not a union representative, will be granted official time while attending any meeting or conference with management.

(3) In addition, reasonable amounts of official time shall be granted in accordance with Section 13 of this Article to local union representatives, to be deducted from the bank of hours in Section 9, for preparation and follow through relating to the processing of such grievances.

(c) Agency Grievances. Reasonable amounts of official time shall be granted in accordance with Section 13 of this Article to NLRBU officials and witnesses for the time spent responding to Agency initiated grievances or unfair labor practice charges.

(d) Adverse Actions and Other Matters Involving Employees. To the extent an employee is entitled to an NLRBU representative under Article 4 (Rights and Obligations of Employees), Sections 8 and 11, Articles 10 (Position Classification), 17 (Probationary and Administrative Trial Period), and 18 (Performance-Based Actions, Adverse Actions, and Suspensions) of this Agreement, the employee and NLRBU representative shall be granted reasonable and necessary amounts of official time for such purposes, except that if such representative is a member of the NLRBU Executive Committee as described in Section 3 of this Article, such time shall be included in the amounts set forth in Section 3(a).

Section 8. Arbitration and Merit Systems Protection Board (MSPB) Hearings. (a) (1) As appropriate, the aggrieved employee; equal numbers of national representatives to that of the Agency;¹⁰⁴ a local union representative, if necessary; and necessary employee witnesses shall be granted reasonable amounts of official time in accordance with Section 13 of this Article for travel and time required to participate in arbitration or MSPB hearings arising under these Agreements.

¹⁰⁴ Employees who are designated as counsel for the NLRBU in an arbitration or MSPB hearing are considered national representatives.

(2) For purposes of determining equal numbers under Section 7(a)(1), the Agency will, at the time the parties strike arbitrators, notify the NLRBU if it intends to have more than one Agency representative participate in the arbitration, and if so, the number of Agency representatives who will participate. For MSPB hearings, the Agency will provide such notification 60 days prior to the hearing. In either case, if the Agency subsequently reduces the number of Agency representatives after the date arbitrators are struck or within 60 days of the MSPB hearing, the NLRBU will be entitled to retain the original number of national representatives. Absent unusual circumstances, the Agency will not increase the number of Agency representatives after the date arbitrators are struck or within 60 days of the MSPB hearing. However, if the Agency does increase the number of Agency representatives, the NLRBU will be notified as soon as possible, typically within 1 day, and will be entitled to equal numbers.

(b) Reasonable amounts of official time shall be granted in accordance with Section 13 of this Article to National Union representatives, for preparation and follow through relating to this Section, except that if such representative is a member of the NLRBU Executive Committee described in Section 3 of this Article, such time shall be included in the amount set forth in Section 3(a).

(c) Further, reasonable amounts of official time shall be granted in accordance with Section 13 of this Article to necessary employee witnesses for preparation relating to this Section.

Section 9. Local Bank for Representational Activities. The amount of official time shall, for the Local Union (officers and designees), not exceed a total of 220 hours for the duration of the National Agreements, unless mutually agreed otherwise at the local level, for the purpose of preparation and follow through relating to: (1) the processing of grievances; (2) local consultations arising under these Agreements; and (3) local negotiations arising under these Agreements.

Section 10. Legislative and Special Issues Activities. Reasonable amounts of official time shall be granted in accordance with Section 13 of this Article to one National Union representative, including an employee designated as a Legislative and Special Issues committee member, for attending congressional appropriation and/or oversight hearings involving the Agency and reporting to the National Officers on these matters. Any National

Officer or Legislative and Special Issues committee member who is scheduled to testify at a congressional appropriation and/or oversight hearing involving the Agency will be granted reasonable amounts of official time under this Article for the purposes of preparation and follow through, traveling to and from, and attending such a hearing.

Section 11. Training of NLRBU Representatives.

(a) National Officers and District Vice-Presidents. The National Union Officers and District Vice Presidents are entitled to a total of up to 176 hours official time in accordance with Section 13 of this Article for each year of the National Agreements for training which is directed to the maintenance and improvement of a mutually beneficial labor relations environment, including meetings for the purposes of implementing this Agreement. Requests for official time under this Subsection shall be made by the NLRBU President.

(b) Committee Members. Up to two NLRBU representatives on the EEO, Health and Safety, and Training Committees are each entitled to a total of up to 16 hours official time for each year of the National Agreements for the conduct and receipt of training which is directed to the maintenance and improvement of a mutually beneficial labor relations environment. Requests for official time under this Subsection shall be made by the NLRBU President.

(c) Local Officials. The officers of each local union or their designees are entitled to a total of up to 100 hours official time in accordance with Section 13 of this Article for the duration of the National Agreements, unless mutually agreed otherwise at the local level, for training which is directed to the maintenance and improvement of a mutually beneficial labor relations environment.

(d) Implementation. For the purpose of implementing the National Agreements during the first year, the NLRBU may conduct implementation briefing(s) at the national or district level. For such briefings, up to two local officers shall each be entitled to 8 hours of official time. Local union officers and employees shall each be entitled to 2 hours of official time to hold a briefing on the National Agreements at the local level.

Section 12. Leave. Upon request, and consistent with the operating needs, the Agency shall grant reasonable and necessary amounts of annual leave, accrued compensatory time, and leave without pay to NLRBU officials in connection with their official duties.

Section 13. Approval for Use of Official Time by Employees. (a) (1) Employees entitled to official time for representational activities will request approval to use such time from his or her immediate supervisor.¹⁰⁵ Supervisors will respond promptly to requests for official time.

(2) Approval of appropriate requests for official time will not be denied unless the necessity of Agency work requirements outweighs the need for the requested official time.

(3) The members of the Executive Committee and their supervisors will regularly communicate regarding the employee's work and official time requirements. Members of the Executive Committee will advise their immediate supervisors of anticipated absences from the office and of large projects which are expected to require the use of significant blocks of official time. This will not be construed as requiring the Executive Committee to disclose the identity of grievants or other confidential Union business. Use of official time by members of the Executive Committee is hereby approved, unless the necessity of Agency work requirements outweighs the need for official time.

(b) Questions or disputes regarding requests for and use of official time under this Agreement will be promptly brought to the attention of the employee involved and the appropriate NLRBU official at the next highest organizational level. Such questions or disputes involving:

(1) NLRBU Executive Committee members, District Vice Presidents, applicable NLRBU Committee members and NLRBU counsel or designee(s) shall be handled by the NLRBU President and [GC CBA: the Associate General Counsel] [Board CBA: the Assistant General Counsel for Labor and Employee Relations] or his or her designee(s) and applicable Office Head;¹⁰⁶

¹⁰⁵ Use of official time for unscheduled calls or inquiries of short duration will not be subject to advance approval.

¹⁰⁶ In the field, "Office Head" refers to the Regional Director. In Headquarters, "Office Head" refers to the Division Head, Branch Chief, Board Member or Board Member's Chief Counsel, as applicable.

(2) NLRBU Local Presidents shall be handled by the applicable District Vice President and Assistant General Counsel for Labor and Employee Relations or his or her designee(s) and the applicable Office Head;

(3) Local union officials and designees below the Local President shall be handled by the applicable Local President and the applicable Office Head; and

(4) Complainants, grievants, and witnesses shall be coordinated, as applicable, by the NLRBU National or Local official or counsel involved with a representative designated by headquarters management and the applicable Office Head, or their designee(s).

Section 14. Consistent with Section 13(a)(2), official time will be provided for an employee designated to act in an NLRBU officer's absence when the officer is on leave for 1 week or more.

Section 15. Recording the Use of Official Time for Representational Activities (a) Representational activities shall include any activities undertaken by employees on behalf of other employees pursuant to such employee's right to representation under statute, regulation, or the terms of this Agreement.

(b) For the purpose of recordkeeping as required by the Office of Personnel Management, employees who use official time for representational activities during a pay period will submit a written and signed statement to their supervisor before the close of each pay period verifying the number of hours used for representational activities on each day of the pay period. The employee's timekeeper will enter the official time hours into FPPS along with the employee's other time and attendance information. The form to be used for official time reporting is attached to this Article.

Section 16. Assignment and Appraisal of Work for NLRBU Officials. (a) Management shall take into account the official time used and reported for representational activities of an employee when evaluating the employee's productivity and work performance.

(b) The NLRBU recognizes that 5 U.S.C. § 7106 provides that management has the right to assign work. However, in exercising its right to assign work, management will consider an employee's availability or unavailability for Agency work based on the employee's need to perform

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union duties that qualify for approvable official time under this Article to the same extent as it considers other factors relating to availability or unavailability such as potentially conflicting Agency work assignments, scheduled annual leave or urgent personal considerations.

Section 17. Employee Status on Official Time. An employee may be given official time under this Article only when he or she would otherwise be in an active duty status. An employee who is on official time under this Article shall have the same status as if he or she were otherwise in an official duty status, including entitlements to pay for such time and other benefits.

Section 18. Payment of Travel and Per Diem. (a) The Agency will pay the travel and per diem expenses of five national officials of the NLRBU for consultation meetings and NLRBU representatives on the EEO, Health and Safety, Training, and Incentive Awards Committees who are on official time for meetings as set forth in Section 4, above.

(b) The parties mutually agree to attempt to coordinate all referenced meetings in order to minimize costs. Insofar as possible, the parties will also attempt to schedule any negotiations arising during the term of the National Agreements in conjunction with the timing of other referenced meetings.

(c) Travel and per diem expenses referenced herein are payable upon submission of approvable travel vouchers which shall comport with federal travel regulations.

Section 19. If the parties mutually agree to extend this agreement beyond the original expiration date, or if the parties allow the agreement to expire, the amounts of official time provided for in Article 28, Sections 9 and 11(c) will automatically be extended on a pro rata basis for each upcoming year.

OFFICIAL TIME REPORT FOR NLRBU REPRESENTATIVES

Pay Period Reported

Employee Name

Organizational Unit

Position with Union

Name of Supervisor

1. GENERAL LABOR-MANAGEMENT RELATIONS (CODE = LRG)

Official time taken from meetings and consultations with Management in connection with all labor-management committees, including labor-management forum, FLRA proceedings, and *Weingarten*-type meetings under 5 U.S.C. § 7114(a)(2)(A) and (B). Includes time spent in meetings with Management related to labor-relations and any preparation and follow-up activities.

Date on which time was used and number of hours used on each day.

2. DISPUTE RESOLUTION: GRIEVANCES AND APPEALS (CODE = LRD)

Official time taken for representation activities in connection with meetings and consultations with Management related to discussions of grievances, arbitrations, adverse actions, and other complaints and appellate processes. Includes time spent in meetings with Management related to grievances and appeals and any preparation and follow-up activities.

Date on which time was used and number of hours used on each day

3. MID-TERM NEGOTIATIONS (CODE= LRT)

Official time spent in mid-term negotiations concerning issues not covered by the collective-bargaining agreement. This includes time spent with FMCS and FSIP. Includes official time spent in preparation or follow-up activities related to the negotiations.

Date on which time was used and number of hours used on each day

4. TERM NEGOTIATIONS (CODE = LRT)

Official time spent in negotiations concerning a successor to the collective-bargaining agreement or negotiations pursuant to contractual reopener provision. This includes time spent with FMCS and FSIP. Includes official time spent in preparations or follow-up activities related to the negotiations.

Date on which time was used and number of hours used on each day

Signature of NLRBU Representative

Date

Signature of Supervisor

Date

DISTRIBUTION: Copy to Office Timekeeper

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ARTICLE 29
USE OF GFV/POV TRANSPORTATION

Section 1. General. The Agency agrees that it will not require employees to use privately owned vehicles (POV) in the conduct of official business. However, employees who elect to use a POV in accordance with the provisions of this Article shall be required to use a POV for official business unless management agrees to permit use of a government furnished vehicle (GFV) when one is available or a temporary emergency situation as defined in Section 2(b) occurs.

Section 2. Elections. (a) Within 30 days after the execution of the National Agreements, employees who would reasonably be expected to engage in official travel by automobile in the foreseeable future,¹⁰⁷ and who have not previously elected, will be asked in writing whether each employee wishes to elect to use a POV or a GFV. In addition, within 15 days after entry on duty or assignment to duties requiring travel by automobile, employees will be asked in writing whether the employee wishes to elect to use a POV or a GFV. The Agency will notify the employee in writing of the election options and that failing to make a choice will be construed as having elected to use a GFV. The default GFV election shall be revocable at any time if the Agency has failed to provide the employee with the written notice of election options and the outcome of failing to make a choice.

(b) The election shall be in writing and be binding for a period of 1 year following the election. In the event of a temporary emergency, such as when a vehicle breaks down, the Agency shall provide other transportation during the temporary emergency.

(c) Release from an election to use a POV or GFV can be obtained by giving written notice to the Regional Director at least 90 days prior to the expiration of the 1-year period, which notice shall not be effective until the expiration of the 1-year period. Absent such written notice, the election shall automatically renew for a 1-year period.

Section 3. Reimbursement Rates. (a) If an employee has elected to use a POV or no GFV is available for use by those who have elected their use, the

¹⁰⁷ Including, but not limited to, all current professional employees, Election Assistants and Compliance Assistants, Language Specialists, and Program Analysts.

rate of reimbursement for use of a POV will be the highest applicable rate for use of a POV.

(b) If a GFV is available for use by an employee who has elected their use, but who then chooses to use a POV on an occasional basis, then the employee will be compensated at the rate set by the GSA, which can be found at the GSA website, which as of the date of publication of this agreement is at <http://www.gsa.gov/portal/content/100715>¹⁰⁸

Section 4. (a) No employee will be subject to discrimination in the appraisal process based on his or her possession of, or access to, a POV or on his or her election to use a GFV or POV.

(b) Nothing in this Article shall interfere with management's right to assign work or to assign employees pursuant to 5 U.S.C. § 7106.

Section 5. Safety of Vehicles While on Official Business.

(a) Agency-Assigned Vehicles. Management will take reasonable steps to ensure that all Agency-assigned vehicles are regularly inspected, as required by State, locality, or manufacturers' recommendations, in order to ensure that such vehicles are properly maintained and safe to operate. Employees will not be required to operate any Agency-assigned vehicle reasonably determined to constitute a hazard to the employee's safety. Employees may request reimbursement for personal property loss as a result of breakdowns or accidents in any Agency-assigned vehicle, and management will consider such requests in accordance with 31 U.S.C. § 240 et seq.

(b) Safety Equipment for Agency-Assigned Vehicles (GSA Cars).

(1) Upon request, the Agency will provide items, such as flash-light, first aid kit, and, where appropriate, snow shovel, to employees traveling on official business in Agency-assigned vehicles.

(2) The Agency shall take all reasonable steps to obtain Agency-assigned vehicles furnished with airbags, anti-lock braking systems (ABS), intermittent wipers, and cruise control as long as these

¹⁰⁸ The rate may also found on the GSA website (www.gsa.gov) by clicking the "POV Mileage Reimbursement" link.

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features are available from GSA as standard options. Where appropriate, fog lights, four-wheel drive, and increased engine capacity features, may be provided.

(c) Each employee occupying a front seat of a motor vehicle on official business, which seat is equipped with a safety belt, shall have the safety belt properly fastened at all times when the vehicle is in motion. Drivers should request that passengers occupying the rear seat utilize the safety belt systems provided.

(d) Drivers and passengers of Agency-assigned vehicles will not smoke while in the vehicle.

(e) Employee drivers shall refrain from text messaging in accordance with APC 10-01, or subsequently negotiated procedure.

(f) Employee drivers must possess a valid motor vehicle operator's license while operating a GFV or POV on official business.

Section 6. Damage to a POV used for Official Business.

(a) Any claims for damage to a POV used for official business shall be processed in accordance with APC 05-03, or subsequently negotiated procedure.

(b) Circumstances where employees should or should not file a claim with their insurance carrier, and requirements for submission of estimates, are as set forth in APC 05-03.

ARTICLE 30
EMPLOYEE ASSISTANCE PROGRAM

Section 1. General. The Employee Assistance Program (EAP) is a voluntary and confidential counseling and referral service available to all Agency employees at no cost. It is a resource for helping employees to deal with issues that may arise in or out of the workplace, which may affect an employee's ability to perform his or her job. Among other things, the EAP can provide employee assistance in addressing prevention, treatment, and rehabilitation services for alcoholism, drug abuse, behavioral or emotional problems, and other problems, which impact on an employee's performance and/or conduct. The EAP is described in the Administrative Policies and Procedures Manual.

Section 2. Voluntary Nature of Program. Participation in the EAP is entirely voluntary. No employee may be forced, threatened, or coerced into accepting any form of counseling or treatment. Acceptance of assistance and cooperation with a counseling or treatment program, however, will be taken into consideration before proceeding with corrective or disciplinary action against any employee, as set forth below.

Section 3. Referrals to the Program. Employees are encouraged to seek assistance voluntarily before their problems begin to affect job performance or conduct, to accept counseling when recommended, and to cooperate with medical treatment and/or rehabilitation programs that may be initiated. In addition, when a manager or supervisor becomes aware that an employee's personal problem (such as alcohol, drugs, or emotional) may be contributing to a performance and/or conduct deficiency, the manager or supervisor will recommend and refer the employee to the counseling program if the employee's problem comes within the scope of the EAP. Beginning upon the execution date of this agreement, when contracting for EAP providers, the Agency shall request that the provider ensure that the counselor communicate to the employee how law and regulations protect the confidentiality of patient records, and explain to the employee any potential advantages to signing a written consent form to notify the employee's supervisor that the employee is seeking assistance. The Human Resources intranet page <http://insider.nlr.gov/office-human-resources> will include the following information:

- (1) A description of EAP services;
- (2) A statement of confidentiality;

- (3) A statement regarding the use of administrative leave;
- (4) The EAP toll free numbers (800) 222-0364 and (888) 222-7848[TTY]; and
- (5) Links to APPM Chapter PER-2 (Employee Assistance Program); Federal Occupational Health [www.FOH4You.com]; and OPM [www.opm.gov/Employmentandbenefits/worklife/healthwellness/EAP/].

The Agency will maintain the EAP information, phone numbers, and links on the Agency's intranet.

Section 4. Confidentiality. No one in the Agency will be told about an employee's participation in the EAP, by the EAP staff or Agency managers or supervisors, without a written consent by the employee, except in limited instances where their participation discloses threats of physical harm, as required by law or government-wide rule and regulations. No EAP information will ever be placed in the employee's Official Personnel Folder or Employee Performance File.

Section 5. Disciplinary Action. In considering whether to take remedial action against an employee based upon performance and/or conduct,¹⁰⁹ the Agency, as noted in Section 2 of this Article, will, if the employee has consented to the release of this information to his or her supervisor, take into consideration whether the employee is cooperating in the counseling or recommended treatment processes of the EAP. Where an employee is cooperating with treatment or counseling recommended through an EAP, and unless extreme situations (e.g., national security, criminal acts, or safety of the employee or others) necessitate immediate adverse action at the same time assistance is offered, the Agency will consider suspending any remedial action for a reasonable period to permit the employee a reasonable time for rehabilitation and an opportunity to improve performance and/or conduct, if applicable. If any remedial action is taken, it will be based solely on the employee's performance and /or conduct, as applicable.

¹⁰⁹ The parties recognize that there is no legal requirement to provide a "firm choice" for employees with alcohol or substance abuse problems. However, consistent with the Agency's intent to assist and retain employees whenever possible, it agrees to continue to provide that option.

Section 6. Disclosure of Participation and Use of Administrative Leave.

Absent an employee's written consent, the Agency may verify an employee's meeting with an EAP provider only if an employee takes administrative leave to seek assistance, whether by self-referral or after referral by the Agency.

**ARTICLE 31
DEPENDENT CARE**

Section 1. The NLRBU and the Agency wish to improve the Agency's ability to recruit and retain employees, to improve employee morale, improve employee attendance, and save Agency recruiting and training costs. Accordingly, the Agency will continue the program to subsidize child care costs to make child care more affordable for lower-income federal employees, when use of appropriated funds is authorized by law or regulation. The program will be consistent with P.L. 107-67 and 5 CFR Part 792.

Section 2. All full-time and regular part-time bargaining unit employees with Total Family Incomes within the schedule in Section 6 are eligible to participate. The benefit will be available to Agency employees in order to subsidize childcare expenses of their children, from birth through age 13, and children with disabilities through age 18, who are enrolled in year-round programs, school-year programs, day-time summer care programs, and part-time programs such as "before and after" school programs. The summer and part-time programs must be licensed and/or regulated.

(a) "Child" is defined in 5 CFR § 792.213.

(b) "Disabled child" is defined in 5 CFR § 792.215.

Section 3. (a) The benefit will be available to subsidize child care expenses of children of eligible employees who are enrolled in Federally-sponsored child care centers, non-Federal child care centers, and care in family child care homes. The child care provider must be licensed and/or regulated by the State and/or local regulating authorities where the child care service is delivered. Agency payment for child care expenses must be paid only to the child care provider and not directly to employees.

(b) When more than one parent works for the Federal Government, child care tuition assistance cannot be awarded for the child/children by more than one Federal agency.

Section 4. Applications: (a) To obtain the subsidy, employees will submit a completed Child Care Tuition Assistance Application Form (OPM Form

1643) to the Human Resources Branch.¹¹⁰ Employees must complete the application form and return it to the Office Manager at least 15 days prior to the beginning of the month in which the employee anticipates starting the program. In addition, employees must attach the following documents to the application:

- (1) Leave and Earnings Statement for the most recent two pay periods for each parent or guardian; and
- (2) A copy of the most recent Federal and State income tax returns.

Written acknowledgement of receipt and approval, or disapproval, of acceptance into the program will be issued to employees. Denials will state the reason for denial.

(b) Employees whose requests have been approved will submit a completed Tuition Assistance Agreement between Employee and Agency. The Agency will provide this form. The form will be re-submitted annually.

(c) The Agency will ask providers to complete the Child Care Provider Information Form (OPM Form 1644), which includes appropriate license information or a statement of compliance with State and/or local child care regulations. License/compliance information will be needed for each child receiving a subsidy.

(d) The employee and child care provider must certify monthly that child care services were rendered. The Agency will provide appropriate forms for this purpose.

(e) The child care provider must submit an invoice for payment to the program administrator. The Agency will advise providers of the name and address of the program administrator.

Section 5. Amount of Child Care Subsidy. (a) The subsidy, based upon Total Family Income, shall be as follows:

¹¹⁰ This form will be available from the Human Resources Branch, in field offices, and/or the intranet.

TOTAL FAMILY INCOME¹¹¹

**CHILD CARE ASSISTANCE
AMOUNT PER FAMILY¹¹²**

\$31,464 or below	\$82.00 per week
\$31,465 to \$35,241	\$70.00 per week
\$35,242 to \$37,929	\$59.00 per week
\$37,930 to \$42,838	\$47.00 per week
\$42,839 to \$46,567	\$35.00 per week
\$46,568 to \$59,999	\$23.00 per week
\$60,000 and above	None

(b) "Total Family Income" is the current combined income of both of the child's parents/guardians (listed on their IRS tax forms as Adjusted Gross Income), reduced by any current State and/or local child care subsidy the parents/guardians currently receive.

(c) The Agency's payment will be offset by current child care assistance amounts received by the child's parents or guardians from local, State or Federal Government sources. The subsidy may not exceed the actual amount of the employee's child care expenses.

Section 6. Information collected from employees will be kept confidential and will not be disclosed except as authorized by the employee or by government-wide rule and regulation.

Section 7. If the statute or regulations require changes in the program, the parties will negotiate over the required changes, and the program will continue during bargaining to the extent lawful.

Section 8. Tax Implications. There may be tax consequences to receiving child care tuition assistance. Employees are responsible for determining their income tax obligations.

¹¹¹ Total Family Income schedules will be recalculated to reflect annual cost of living increases. The revised schedule will be distributed to unit employees.

¹¹² Child care assistance amount per family will be recalculated to reflect annual cost of living increases. The revised schedule will be distributed to unit employees.

Section 9. The Agency and NLRBU will jointly publicize the program to employees.

Section 10. (a) The Agency and the NLRBU recognize that employees may have child-care and dependent-care needs during working hours. The parties also recognize that securing adequate care facilities for the needs of all employees is desirable. The parties shall pursue efforts, within the non-economic resources available to both, to have such facilities available to employees. The Agency's and the NLRBU's efforts may include working with outside organizations, other Federal agencies, and already established programs.

(b) Furthermore, the Agency agrees to cooperate with other agencies whose function it is to provide assistance in locating available care facilities, provided such cooperation on the Agency's part shall not require it to expend any funds.

Section 11. (a) The Agency will provide to inquiring employees available listings, of qualified, licensed care facilities in the immediate area of each office. However, the Agency shall not be liable to any extent regarding the qualifications or licensing of any facilities listed.

(b) During orientation of new employees, the subject of the availability of adequate care centers will be covered if appropriate.

(c) The Agency agrees reasonably to accommodate the child-care and dependent-care needs of employees consistent with Article 14 (Leave), Article 21 (Hours of Work), and Article 22 (Part-Time Employment).

Section 12. When expenditures under Section 5 exceed \$21,000 in a fiscal year, remaining expenditures will be consistent with budgetary considerations.

ARTICLE 32
SMOKE FREE WORKPLACE

Section 1. (a) The general purpose of this provision is to provide a smoke free environment in the workplace to the extent practicable. A smoke free environment means an environment free of environmental tobacco smoke (ETS).

(b) Smoking is defined as a lighted cigar, cigarette, pipe or any other lit tobacco product.

(c) Environmental tobacco smoke is defined as tobacco smoke (also known as "second hand smoke") in the ambient atmosphere composed of sidestream smoke and exhaled mainstream tobacco smoke.

Section 2. Smoking is prohibited in Agency facilities.

Section 3. In those buildings where smoking is permitted by other tenants, the Office Head and Local Union may advise building management that the local parties support the establishment of (a) designated smoking areas in the building which are equipped with a separate dedicated exhaust system so that ETS from the smoking area is not recirculated within the facility or mixed with the general dilution ventilation for the facility and/or (b) appropriate outdoor designated smoking areas. If the Office Head and Local Union are unable to agree to building smoking policy, each local party may communicate its respective position to building management.

Section 4. Uniform "no-smoking" signs will be furnished to each field, headquarters or satellite judge's office, to be displayed where appropriate.

Section 5. The Agency shall do the following to assist smoking employees who are attempting to quit smoking:

(a) The Agency, upon request, shall provide assistance to employees in locating smoking cessation classes. If classes are not available at no cost, the Agency will reimburse an employee for the cost of classes up to the amounts in subsection (c) below.

(b) The Agency, upon request, shall reimburse employees for the cost of nicotine gum and nicotine patches up to the amounts set forth in subsection (c) below.

ARTICLE 32

(c) An employee will be reimbursed for smoking cessation classes, nicotine gum, nicotine patches, or any combination of these items, to the extent not provided by the employees' FEHB insurer and the Agency EAP program, not to exceed \$250 in total for the term of this Agreement.

(d) Upon request, and consistent with operating needs, an employee will be granted reasonable amounts of administrative leave to attend one smoking cessation class when such classes are not reasonably available or the employee cannot reasonably avail him/herself of such classes outside of regularly scheduled working hours.

(e) Employees may contact the Employee Assistance Program for assistance in locating smoking cessation classes.

ARTICLE 33
TRANSFERS¹¹³

Section 1. (a) Transfer registers will be maintained for employees who desire to transfer to the same grade level to Regional, Subregional, Resident, and Headquarters offices.¹¹⁴

(b) Employees will be eligible to place their names on the no more than four transfer registers¹¹⁵ after they have completed 6 months of Agency service, provided, however, employees will not be eligible to transfer until after they have completed 24 months of Agency service and have a rating of record of “Fully Successful” or better. However, this will not preclude the Agency from placing an employee’s name on any register before the completion of 6 months of service or from transferring an employee before the completion of 24 months of service where the employee’s request involves a compelling personal hardship. The registers will be posted and updated as appropriate on the Agency’s intranet site and will be viewable by all employees.

Section 2. Request for transfer should be submitted by employees to the Assistant General Counsel, Labor and Employee Relations, Division of Operations-Management, indicating the Regional, Subregional, Resident and Headquarters offices for which the employees wishes to be considered. The request for paid transfer will be in effect until the following October 1, and in order for the registration to continue, it must be renewed during the month of September. Any registration not renewed by October 1 or each year will expire on that date. On or about September 1 of each year, the Agency will issue a memorandum to employees reminding them of the need to renew their registration.

Section 3. The granting of transfers will always comport with sound personnel practices and the management needs of the Agency. In making

¹¹³ The procedures of this Article do not apply to mandatory placement actions required in connection with the Agreement on Reduction-in-Force Procedures between the parties.

¹¹⁴ Consistent with past practice, the provisions of this Article do not bind the General Counsel, but rather provide that the Board will maintain a transfer register for those Board employees desiring to transfer to General Counsel positions and that such register will be provided to the General Counsel.

¹¹⁵ For purposes of this article, registration for more than one office in each of the following metropolitan areas shall count as one registration: Los Angeles, San Francisco-Oakland, New York-Brooklyn-Newark, and Baltimore-Washington DC.

selections from the transfer register, in addition to full consideration of all the factors described in Article 6 Section 5, consideration shall be given to the length of time on the register for the particular office involved.

Section 4. (a) When decisions are made to hire new employees or to otherwise change, increase or decrease the staff of a particular area, consideration will be given to the following: (1) all Agency employees on transfer registers and no-cost lists for that area; (2) the staffing and operating needs of the offices involved in such possible transfers; (3) the availability of applicants for employment in such area; and (4) budgetary considerations of the Agency.¹¹⁶

(b) Upon the making of any transfer offer, the NLRBU will be informed. The costs of paid transfers under this Section will be paid to the extent permitted by law and government-wide rule and regulation in effect at the time of the transfer.

(c) In the event an Agency position is filled by selection from a transfer register/list under this Article, the NLRBU will be notified of the selection. Upon request, an earlier registrant/listee and/or the NLRBU will be advised of the reasons why the employee was not selected.

(d) When a unit position is filled in a field office without resort to the transfer register lists, the NLRBU will be notified and the NLRBU will, upon request, be informed of the reason for the decision.

(e) If an employee on a transfer register refuses to accept an offer of transfer without good cause, his or her name will be deleted from all registers for a period of 1 year.

(f) The selection of employees from among those on the transfer registers/lists shall not be based on arbitrary or unreasonable considerations.

Section 5. Other Transfers. (a) The provisions of this Article do not limit the right of the Agency to offer or effectuate other transfers independent of the provisions of this Article or to fill positions through hiring applicants from any appropriate source.

¹¹⁶ It is understood that giving consideration to employees on the no-cost list when making decisions whether to hire, change, increase, or decrease staff in an office does not indicate that the transfer is primarily in the interest of the government.

(b) An employee desiring a no-cost transfer for his or her personal benefit will make a request to the Agency. The Agency will notify the NLRBU of the employee's name and the office (s) to which the employee seeks to transfer. The existence of a compelling personal hardship¹¹⁷ will be a factor in determining whether an employee's request to transfer at no cost to the Agency will be granted. If a decision is made to grant a transfer to an employee who has a compelling personal hardship, such transfer will be deemed to be primarily in the interest of the employee and will be effectuated at no-cost to the Agency. However, where an employee desires a hardship transfer to an office that needs employees, such transfers may be considered primarily in the interest of the government. Management will notify the NLRBU of the decision to offer a transfer at no-cost to an employee to a unit position. An employee who is transferred at no-cost will receive 10 days administrative leave, exclusive of travel, if such time is needed to assist him/her to relocate to the new duty station.

(c) With respect to other transfers not covered by Section 5(b) above, management will, consistent past practice, notify the NLRBU of the decision to offer a transfer to an employee to a unit position and will bargain to the extent required by law over the procedures and effects of the transfer.

¹¹⁷ Compelling personal hardship transfers shall include transfers requested by an employee in order to follow a spouse of significant other to a new location. When an employee requests a hardship status, the Agency will inform the employee of the decision within 30 days following the date of the request, absent extenuating circumstances.

ARTICLE 34
TELEWORK PROGRAM

Section 1. General. (a) Subject to the other terms of this agreement and consistent with applicable law and government-wide rule and regulation, a telework program is established to provide opportunities for employees to perform their official duties at home.

(b) The telework program shall have the following components: (1) temporary medical/health related telework; (2) project telework; (3) emergency telework, pandemic telework, and COOP telework; and (4) regularly scheduled telework.

(c) "Portable work" is work which may be productively performed at home and does not require travel or meeting with the public.

(d) Under any of the telework components described in Subsection (b), employee participation is voluntary. Individuals who have elected to telework, however, may be mandated to work on telework in certain situations as noted in the provisions of Section 5 of this Article relating to Emergency Telework and Pandemic and COOP Telework.

Section 2. Temporary Medical/Health Related Telework¹¹⁸ (a) Definition. Temporary medical/health related telework is a flexible workplace arrangement in which an employee who has a temporary medical or health related condition which limits the employee's mobility or ability to commute to and from the office or, at the discretion of the Office Head, which limits the employee's ability to work in the office, may be permitted to perform portable telework for a temporary period of time while recuperating from that condition.

(b) Eligibility. To be eligible, an employee must meet the following requirements:

(1) An employee must have a medical or health related condition which limits his/her ability to be mobile or to work in the office, or

¹¹⁸ The telework program may be used to provide reasonable accommodation for employees who qualify under the Rehabilitation Act of 1973. Eligible employees will be provided accommodations in accordance with Section 508 of the Americans with Disabilities Act. This provision is not intended to waive any employee's right to a reasonable accommodation with respect to any disabling condition under the Rehabilitation Act.

poses a hardship in traveling to and from the office, and the employee is otherwise capable of performing portable telework.

(2) An employee must have a summary performance rating of Fully Successful or better, not be serving in their first year of employment with the Agency, and not be on a Performance Improvement Plan.

(3) An employee must have demonstrated dependability and the ability to work independently and responsibly, and the ability to prioritize work effectively and utilize good time management skills.

(4) An employee must have work space in the home for performance of work duties at home that meets health and safety requirements, as contained in the employee certification.

(5) An employee must not have been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

(6) The bar on participation for the types of conduct referenced in subparagraph 5 above remains in place for one year.

(7) Employees working on a Maxiflex or a Gliding Flex schedule may telework, but they must send an e-mail message to their immediate supervisor at the beginning and end of each workday. Management may permit part time employees to telework.

(c) *Employee Responsibilities.* (1) Ensuring that telework does not negatively affect case processing responsibilities inside and outside the office. The employee may not unreasonably delay completion of assignments because the teleworker is working from the alternate worksite. Meetings with members of the public may not be conducted at the alternate worksite. The employee must attend in person agendas, trainings staff meetings, and conferences as reasonably required by management.

(2) Ensuring availability for communication with coworkers, managers and customers, including monitoring e-mail communications and voice mail in both the official duty station and the alternate worksite and timely responding to both;

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(3) Immediately reporting to the supervisor any job-related incident that results in or has the potential to cause injury, illness, security compromise, or property damage, and promptly complying with any reporting or evaluation requirements;

(4) Employees must ensure that they have at home the files and equipment, including an agency-provided laptop, necessary to do the portable work.

(d) *Employee Request.* An employee who meets the eligibility set forth above and seeks a telework arrangement must submit a Telework Agreement (Appendix) to the Office Head seeking a temporary medical or health related telework arrangement. The employee must submit administratively acceptable evidence, supported by appropriate medical documentation, confirming the employee's medical or health condition and a certification that the employee is able to perform telework, and setting forth the anticipated period of the telework arrangement. By mutual agreement of the parties, the period of the temporary medical or health related telework may be extended.

(e) *Review of Employee's Request by Office Head.* The decision of the Office Head or his/her designee to approve or deny such requests for a temporary medical or health related telework arrangement shall be based on a review of the employee's eligibility, the availability of sufficient portable work for the employee to perform at home, the availability of any necessary equipment and the operating needs of the office.

(f) *Equipment.* (1) Employees who telework must have high speed internet service, phone service, and approved remote access capability to the Agency's computer network. The Agency is not responsible for any operating costs that are associated with the employee's use of the personal residence as an alternate worksite. This includes home maintenance, insurance, or utilities.

(2) Government furnished equipment and software must be used for official duties while teleworking. Teleworkers may not authorize any other person to use government-furnished equipment. Teleworkers are responsible for taking reasonable precautions in preventing any loss or damage to government-furnished equipment issued to them. Government-furnished equipment must not be altered or upgraded in any way. Software loaded on a government-furnished

computer may not be copied to personal computers. Teleworkers are responsible for procuring Internet services. All home wireless or wired services should be secure. The Agency is responsible for the maintenance of all government-furnished equipment. The employee may be required to bring such equipment into the office for maintenance. Personal equipment may be used for limited official work-related purposes, such as checking e-mail. The Agency is responsible for ensuring that employees have the access and resources needed to accomplish their duties. These resources may include information technology hardware and software – including that necessary for secure remote access – Help Desk support, and office supplies.

(g) Work Agreement and Reporting Requirements. (1) The employee who has been approved for a temporary medical or health related telework arrangement shall sign a telework agreement and submit a form certifying the health and safety of the home worksite, as contained in the employee certification, and shall timely submit bi-weekly time and attendance reports.

(2) Employees on a temporary medical or health related telework arrangement must be accessible to management and supervision by telephone or e-mail throughout the hours of the employee's regular workday.

(3) An employee who will be working at home on a temporary medical or health related telework arrangement must make arrangements to provide daycare for any children or dependent adults requiring supervision or care who are at home with them during the hours in which he/she will be working at home.

(4) The employee will be assigned work which can be performed at home and will not require travel or face-to-face meetings with the public. The employee will not meet face-to-face in the home with members of the public.

(h) Damages, Reimbursement, Federal Employee's Compensation, and Protection of Agency Records. (1) The Agency will not be liable for damages to an employee's personal or real property during the course of official duties or while using Government equipment in the employee's residence, except to the extent the Agency is held liable by Federal Tort Claims Act claims or claims arising under the Military Personnel and Civilian Employee Claims Act.

(2) The Agency will not be responsible for operating costs, home maintenance, or other incidental costs (e.g., utilities) whatsoever, associated with the use of the employee's residence. By participating in this program, the employee does not relinquish any entitlement to reimbursement for authorized expenses incurred while conducting business for the Government, as provided for by statute and implementing regulations.

(3) The employee is covered under the Federal Employee's Compensation Act if injured in the course of actually performing official duties.

(i) *Information Security*. While on telework, employees should continue to abide by the following IT Security APPMs:

Protection of Sensitive Agency Information

Breach Notification Policy

Acceptable Use of Agency IT Resources Policy

(2) Neither family members nor other individuals are authorized to handle and/or view any confidential government data, whether in electronic or paper form.

(j) *Termination*. (1) A temporary medical or health related telework arrangement will automatically terminate on the date set forth in the telework agreement. By mutual agreement of the parties, the period of the temporary medical or health related telework may be extended.

(2) Management may terminate an agreement for a decline in performance or productivity, but only where there is a nexus between the employee working telework and the decline in performance or productivity. In such cases, management must give reasonable advance notice in writing of its intent and offer the employee a reasonable opportunity to improve. Management may also terminate an agreement if the employee becomes ineligible to telework or violates the telework agreement.

(3) An employee may end his/her participation in the temporary medical or health related telework arrangement by providing written notice to the Office Head.

Section 3. Project Telework. (a) Definition. (1) Project telework is a flexible workplace arrangement in which an employee is approved on a short-term basis to telework on a project(s) involving portable work.

(2) A project is defined as portable work, including, but not limited to, representation decision writing, briefs, reports on challenges and objections, agenda minutes and final investigative reports, reviewing transcripts, backpay calculations, written translation tasks, NxGen tasks, compliance tasks, and other appropriate work assignments which can be accomplished at home.

(b) *Eligibility.* To be eligible, an employee must meet the following requirements:

(1) An employee must have a summary performance rating of Fully Successful or better, not be serving in their first year of employment with the Agency, and not be on a Performance Improvement Plan.

(2) An employee must have demonstrated dependability and the ability to work independently and responsibly, and the ability to prioritize work effectively and utilize good time management skills.

(3) An employee must have work space in the home for performance of work duties at home that meets health and safety requirements, as contained in the employee certification.

(4) An employee must not have been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

(5) The bar on participation for the types of conduct referenced in subparagraph 5 above remains in place for one year.

(6) Employees working on a Maxiflex or a Gliding Flex schedule may telework, but they must send an e-mail message to their

immediate supervisor at the beginning and end of each workday. Management may permit part time employees to telework.

(7) Trainees, detailees, and transferees during their first year are generally not eligible to participate in regularly scheduled telework.

(c) Employee Responsibilities. (1) Ensuring that telework does not negatively affect case processing responsibilities inside and outside the office. The employee may not unreasonably delay completion of assignments because the teleworker is working from the alternate worksite. Meetings with members of the public may not be conducted at the alternate worksite. Management reserves the right to require employees to report to the official duty location on scheduled telework days, based on operational or mission related requirements, including, but not limited to, agendas, trainings, staff meetings, conferences, and meeting with the public. When a teleworker is directed to report to the traditional worksite after the workday has begun, the teleworker must report within a reasonable amount of time, taking into consideration travel distance, mode of transportation, etc. The telework agreement will specify the amount of time an employee will normally work at the alternate worksite, based on mission and operational needs.

(2) Ensuring availability for communication with coworkers, managers and customers, including monitoring e-mail communications and voice mail in both the official duty station and the alternate worksite, and timely responding to both;

(3) Immediately reporting to the supervisor any job-related incident that results in or has the potential to cause injury, illness, security compromise, or property damage, and promptly complying with any reporting or evaluation requirements; and

(4) Employees must ensure that they have at home the files and equipment, including an agency-provided laptop, necessary to do the portable work.

(d) Employee Request. The employee who meets the eligibility set forth above will submit a Telework Agreement (Appendix) to his/her supervisor in advance seeking to telework on a project. When the Telework Agreement has been approved by management, the employee will advise his/her supervisor each time the employee wishes to telework on a particular project, including the work to be performed and the timeframe in which such work will be performed.

(e) Review of Employee's Request by Office Head The decision of the Office Head or his/her designee to approve or deny such requests for telework on a project shall be based on a review of the employee's eligibility, whether the proposed project of portable work can be performed at home, the availability of any necessary equipment and the operating needs of the office.

(f) Equipment. (1) Employees who telework must have high speed internet service, phone service, and approved remote access capability to the Agency's computer network. The Agency is not responsible for any operating costs that are associated with the employee's use of the personal residence as an alternate worksite. This includes home maintenance, insurance, or utilities.

(2) Government- furnished equipment and software must be used for official duties while teleworking. Teleworkers may not authorize any other person to use government-furnished equipment. Teleworkers are responsible for taking reasonable precautions in preventing any loss or damage to government-furnished equipment issued to them. Government-furnished equipment must not be altered or upgraded in any way. Software loaded on a government-furnished computer may not be copied to personal computers. Teleworkers are responsible for procuring Internet services. All home wireless or wired services should be secure. The Agency is responsible for the maintenance of all government-furnished equipment. The employee may be required to bring such equipment into the office for maintenance. Personal equipment may be used for limited official work-related purposes, such as checking e-mail. The Agency is responsible for ensuring that employees have the access and resources needed to accomplish their duties. These resources may include information technology hardware and software – including that necessary for secure remote access – Help Desk support, and office supplies.

(g) Work Agreement, Reporting, and Other Requirements. (1) The employee who has been approved for a project telework arrangement shall sign a form certifying the health and safety of the home worksite.

(2) Employees at home on the project telework arrangement must be accessible to Management and supervision by telephone or by e-mail throughout the hours of the employee's regular office workday, except for lunch.

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(3) An employee who will be working at home on the project telework arrangement must arrange for coverage of any in-office work that he/she is required to perform during the dates of the project telework, such as information officer duties. In addition, employees must regularly call in to check their messages throughout the telework day(s).

(4) An employee who will be working at home on a project telework arrangement must make arrangements to provide daycare for any children or dependent adults requiring supervision or care who are at home with him/her during the hours in which he/she will be working at home.

(5) The employee will not meet face-to-face in the home with members of the public.

(6) Employees may not change or deviate from their designated alternate worksite without authorization. Such authorization will not be unreasonably denied. However, emergency situations like a natural disaster may require unique arrangements and a change to the alternate worksite may be appropriate.

(7) Teleworkers who are reasonably required to report to the traditional worksite during the regular workday will not be reimbursed for travel costs or travel time. This does not apply to transit subsidies, as provided in Article 38 of this Agreement.

(h) *Termination.* Management may terminate an agreement for a decline in performance or productivity, but only where there is a nexus between the employee working telework and the decline in performance or productivity. In such cases, management must give reasonable advance notice in writing of its intent and offer the employee a reasonable opportunity to improve. Management may also terminate an agreement if the employee becomes ineligible to telework or violates the telework agreement.

(1) The telework agreement may be terminated by the employee with written notification.

(2) Management may also terminate a telework agreement that is no longer consistent with the office's operating needs.

(3) To terminate a telework agreement, a supervisor must provide written notification of the termination, which will include the employee's final date of work at the alternate worksite and the date on which the employee is expected to report for duty at the traditional worksite.

(i) Change to Telework Agreement. A permanent change in the telework arrangement requires a new telework agreement.

(j) Damages, Reimbursement, Federal Employee's Compensation, and Protection of Agency Records. (1) The Agency will not be liable for damages to an employee's personal or real property during the course of official duties or while using Government equipment in the employee's residence, except to the extent the Agency is held liable by Federal Tort Claims Act claims or claims arising under the Military Personnel and Civilian Employee Claims Act.

(2) The Agency will not be responsible for operating costs, home maintenance, or other incidental costs (e.g., utilities) whatsoever, associated with the use of the employee's residence. By participating in this program, the employee does not relinquish any entitlement to reimbursement for authorized expenses incurred while conducting business for the Government, as provided for by statute and implementing regulations.

(3) The employee is covered under the Federal Employee's Compensation Act if injured in the course of actually performing official duties.

(k) Information Security. (1) While on telework, employees should continue to abide by the following IT Security APPMs:

Protection of Sensitive Agency Information

Breach Notification Policy

Acceptable Use of Agency IT Resources Policy

(2) Neither family members nor other individuals are authorized to handle and/or view any confidential government data, whether in electronic or paper form.

Section 4. Regularly Scheduled Telework. (a) Definition. Regularly scheduled telework is a flexible workplace arrangement in which an employee is approved to telework for up to three regularly scheduled days per pay period and not more than two days in any week, with the amount requested to be at the option of the employee, and as defined below, provided that there is sufficient portable work that can be performed at the home worksite and the operating needs of the office do not require the presence of the employee in the office.

(b) Eligibility. To be eligible, an employee must meet the following requirements:

(1) An employee must have a summary performance rating of Fully Successful or better, not be serving in their first year of employment with the Agency and not be on a Performance Improvement Plan.

(2) An employee must have demonstrated dependability and the ability to work independently and responsibly, and the ability to prioritize work effectively and utilize good time management skills.

(3) An employee must have work space in the home for performance of work duties at home that meets health and safety requirements, as contained in the employee certification.

(4) An employee must not have been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

(5) The bar on participation for the types of conduct referenced in subparagraph 5 above remains in place for one year.

(6) Employees working on a Maxiflex or a Gliding Flex schedule may telework, but they must send an e-mail message to their immediate supervisor at the beginning and end of each workday. Management may permit part time employees to telework.

(7) Trainees, detailees, and transferees during their first year are generally not eligible to participate in regularly scheduled telework.

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(c) *Employee Responsibilities.* (1) Ensuring that telework does not negatively affect case processing responsibilities inside and outside the office. The employee may not unreasonably delay completion of assignments because the teleworker is working from the alternate worksite. Meetings with members of the public may not be conducted at the alternate worksite. Management reserves the right to require employees to report to the official duty location on scheduled telework days, based on operational or mission-related requirements, including, but not limited to, agendas, trainings, staff meetings, conferences, and meeting with the public. When a teleworker is directed to report to the traditional worksite after the workday has begun, the teleworker must report within a reasonable amount of time taking into consideration travel distance, mode of transportation, etc. The telework agreement will specify the amount of time an employee will normally work at the alternate worksite, based on mission and operational needs.

(2) Ensuring availability for communication with coworkers, managers and customers, including monitoring e-mail communications and voice mail in both the official duty station and the alternate worksite, and timely responding to both;

(3) Immediately reporting to the supervisor any job-related incident that results in or has the potential to cause injury, illness, security compromise, or property damage, and promptly complying with any reporting or evaluation requirements; and

(4) Employees must ensure that they have at home the files and equipment, including an agency-provided laptop, necessary to do the portable work.

(d) *Employee Request.* An employee who meets the eligibility standards set forth above and wishes to participate in the program will submit a Telework Agreement (Appendix) to the Office Head seeking regularly scheduled telework days. Such request will include the proposed days of the week for the regularly scheduled telework arrangement.

(e) *Review of Employee's Request by Office Head.* The decision of the Office Head or his/her designee to approve or deny such requests for regular telework shall be based on a review of the employee's eligibility, whether the proposed portable work can be performed at home, and the availability of any necessary equipment. The number of eligible employees who may telework on a given day will be determined by the operating needs of the

office and any local agreement and in accord with the provisions of Article 21 of this Agreement.

(f) Telework Arrangements. (1) Management reserves the right to require employees to report to the official duty location on scheduled telework days, based on operational or mission related requirements, including, but not limited to, agendas, trainings, staff meetings, conferences, and meeting with the public. When a teleworker is directed to report to the traditional worksite after the workday has begun, the teleworker must report within a reasonable amount of time taking into consideration travel distance, mode of transportation, etc.

(2) The telework agreement will specify the amount of time an employee will normally work at the alternate worksite, based on mission and operational needs.

(3) Teleworkers may not earn credit hours on the days that they are working at the alternate worksite, absent authorization from management.

(g) Equipment. (1) Employees who telework must have high speed internet service, phone service, and approved remote access capability to the Agency's computer network. The Agency is not responsible for any operating costs that are associated with the employee's use of the personal residence as an alternate worksite. This includes home maintenance, insurance, or utilities.

(2) Government-furnished equipment and software must be used for official duties while teleworking. Teleworkers may not authorize any other person to use government-furnished equipment. Teleworkers are responsible for taking reasonable precautions in preventing any loss or damage to government-furnished equipment issued to them. Government-furnished equipment must not be altered or upgraded in any way. Software loaded on a government-furnished computer may not be copied to personal computers. Teleworkers are responsible for procuring Internet services. All home wireless or wired services should be secure. The Agency is responsible for the maintenance of all government-furnished equipment. The employee may be required to bring such equipment into the office for maintenance. Personal equipment may be used for limited official work-related purposes, such as checking email. The Agency is responsible for ensuring that employees have the access and

resources needed to accomplish their duties. These resources may include information technology hardware and software – including that necessary for secure remote access – Help Desk support, and office supplies.

(h) Work Agreement, Reporting, and Other Requirements.

(1) The employee who has been approved for a regularly scheduled telework arrangement shall sign a form certifying the health and safety of the home worksite, as contained in the employee certification.

(2) Employees on the regularly scheduled telework day must be readily accessible to Management and supervision by telephone or e-mail throughout the hours of the employee's regular office workday. If an employee is leaving his/her home during the regularly scheduled workday, the employee must notify the supervisor in advance by telephone of the reason for his/her absence.

(3) An employee who will be teleworking on a regularly scheduled telework day must arrange for coverage of any in-office work that he/she is required to perform that day, such as information officer duties. In addition, employees must regularly call in to check their messages throughout the telework day.

(4) An employee who will be working at home on a regularly scheduled telework day must make arrangements to provide daycare for any children or dependent adults requiring supervision or care who are at home with him/her during the hours in which he/she will be teleworking.

(5) The employee will not meet face-to-face in the home with members of the public.

(6) Employees may not change or deviate from their designated alternate worksite without authorization. Such authorization will not be unreasonably denied. However, emergency situations like a natural disaster may require unique arrangements and a change to the alternate worksite may be appropriate.

(7) Teleworkers who are reasonably required to report to the traditional worksite during the regular workday will not be

reimbursed for travel costs or travel time. This does not apply to transit subsidies, as provided in Article 38 of this Agreement.

(8) It is expected that requests to temporarily change a scheduled telework day in a particular week or biweekly pay period must be submitted one pay period in advance and management will respond promptly. Such requests will not be unreasonably denied.

(i) Change to Telework Agreement. A permanent change in the telework arrangement requires a new telework agreement.

(j) Damages, Reimbursement, Federal Employee's Compensation, and Protection of Agency Records. (1) The Agency will not be liable for damages to an employee's personal or real property during the course of official duties or while using Government equipment in the employee's residence, except to the extent the Agency is held liable by Federal Tort Claims Act claims or claims arising under the Military Personnel and Civilian Employee Claims Act.

(2) The Agency will not be responsible for operating costs, home maintenance, or other incidental costs (e.g., utilities) whatsoever, associated with the use of the employee's residence. By participating in this program, the employee does not relinquish any entitlement to reimbursement for authorized expenses incurred while conducting business for the Government, as provided for by statute and implementing regulations.

(3) The employee is covered under the Federal Employee's Compensation Act if injured in the course of actually performing official duties.

(k) Information Security. (1) While on telework, employees should continue to abide by the following IT Security APPMs:

Protection of Sensitive Agency Information

Breach Notification Policy

Acceptable Use of Agency IT Resources Policy

(2) Neither family members nor other individuals are authorized to handle and/or view any confidential government data, whether in electronic or paper form.

(1) *Termination.* Management may terminate an agreement for a decline in performance or productivity, but only where there is a nexus between the employee working telework and the decline in performance or productivity. In such cases, management must give reasonable advance notice in writing of its intent and offer the employee a reasonable opportunity to improve. Management may also terminate an agreement if the employee becomes ineligible to telework or violates the telework agreement.

(1) The telework agreement may be terminated by the employee with written notification.

(2) Management may also terminate a telework agreement that is no longer consistent with the office's operating needs.

(3) To terminate a telework agreement, a supervisor must provide written notification of the termination, which will include the employee's final date of work at the alternate worksite and the date on which the employee is expected to report for duty at the traditional worksite.

Section 5: Emergency Telework, Pandemic Telework, COOP Telework: (a) Definitions:

(1) Emergency Telework – A work schedule where an eligible employee works at the home worksite on short notice because of short-term unfavorable weather conditions or other short-term emergency situations such as a building closure or a major public transportation interruption.

(2) Pandemic Telework – A work schedule where eligible employees work at the home worksite on a regular basis in order to maintain essential functions and services in the face of significant absenteeism (forty percent or greater) related to health issues.

(3) COOP Telework – A work schedule where eligible employees remain in contact with the Agency and work at the home worksite on a regular basis in order to maintain mission essential functions and services during a COOP event.

(b) *Emergency Telework.* If, in an emergency situation, the government or the Office Head announces that the government or office is open for a whole day with the option of liberal leave or liberal telework, employees who have an approved telework agreement may telework. Employees who do not have an approved telework agreement must take leave or report to the traditional worksite.

If an emergency situation results in closure of the Agency traditional worksite for all or part of a day, teleworkers scheduled to telework on that day will telework to the extent that they have portable work that can be performed. If the teleworker is prevented from accomplishing work because of the same emergency situation that resulted in the closure of the traditional worksite or because of a lack of sufficient portable work, the teleworker may be provided administrative leave in the same amounts as those not teleworking, and who were working in the traditional worksite. The teleworker claiming such leave is responsible for providing appropriate documentation in support of that claim. Alternatively, the teleworker may take annual leave or use compensatory time.

The employee will follow the Agency's policy and OPM guidance regarding obtaining approval for excused absences for emergency situations affecting the home.

(c) *Pandemic and COOP Telework.* (1) When a pandemic exists, management may direct employees who have a current telework agreement to telework in their homes or other approved site, under self-quarantine for up to 90 days per wave of the outbreak to support social distancing practices.

(2) When a COOP event exists, management may direct employees who have a current telework agreement to telework in their homes or other approved site.

(3) During any period that the Agency is operating under a Pandemic Plan or a Continuity of Operations Plan, the controlling plan shall supersede any individual telework arrangement.

Section 6. Space. Efficient utilization of office space is a beneficial characteristic of a telework program. It is understood that the Agency work space of employees participating in the telework program may be utilized for other purposes. Such utilization must be consistent with this collective bargaining agreement and any local agreements or understandings in place as

authorized by Article 26 of this agreement. The Agency will comply with any obligations to bargain imposed by the Agreement or applicable law prior to unilaterally making any changes to space as a result of telework.

Section 7. Disapproval or Temporary Adjustment of Scheduled Telework Day. If the Office Head determines that allowing an employee to be absent from the office due to working Telework would preclude operational needs from being met, then the Agency may decline to approve that Telework day or, if previously approved, cancel or change the Telework day and direct that the employee report to the office or another location. The disapproval or cancellation or change of such Telework days will be done only if reasonable alternatives are not available that would meet operational needs. The exercise of management discretion under this paragraph is expressly understood to be subject to challenge in the negotiated grievance and arbitration procedures. If operational needs require disapproval, cancellation, or change pursuant to this Section, priority will be given to preserving, first, employees' days off pursuant to 5-4-9 schedules, then preserving regularly scheduled telework days that have been approved, and last preserving days off pursuant to Maxiflex schedules.

APPENDIX: Telework Application/Agreement/Checklist

APPLICATION/AGREEMENT

Employee Name _____
 Date _____
 NLRB Office _____

1. Identify your current work schedule and tour of duty hours

<input type="checkbox"/>	Standard 8.5 hour day
<input type="checkbox"/>	
<input type="checkbox"/>	Other (provide details):

2. Identify the type of Telework Arrangement requested:

Core arrangements are regularly scheduled times or days. Identify telework day(s) and hours on schedule below:

1st Week of Pay Period	2nd Week of Pay Period
Monday	Monday
Tuesday	Tuesday
Wednesday	Wednesday
Thursday	Thursday
Friday	Friday

Ad hoc/Unscheduled/Episodic (e.g., project related work, weather related, other).

Medical: Indicate start date and end date, and identify times of telework hours per day on schedule below

Start Date:

End Date:

1st Week of Pay Period	2nd Week of Pay Period
Monday	Monday
Tuesday	Tuesday
Wednesday	Wednesday
Thursday	Thursday
Friday	Friday

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Attach medical certification from a physician or medical care provider, supporting the request to medical telework and stating (1) the nature of the illness or injury, (2) the anticipated beginning and ending dates of the incapacitation, (3) the reason the employee is incapable of commuting to the official duty station and/or working at the official duty station for an entire day, (4) that the employee is capable of working at home, and (5) any limitations on the employee's ability to work at home.

I agree to use the attached form, or its equivalent, to report my hours per pay period.

By signing this agreement, I understand that if I am determined to be eligible for regular or project telework that I am also eligible for telework in the event of a Pandemic or COOP event.

3. Address of alternate worksite (choose one)

Home:	
-------	--

4. Agreement

I agree to abide by and be bound by the terms and conditions for telework established in this agreement and the conditions set forth in the applicable collective-bargaining agreement.

Employee Signature

Date

Official Action on Application

Approved to telework under the terms and conditions for telework established in this agreement and the applicable collective-bargaining agreement.

Disapproved

First level Supervisor Signature

Date

Second level Supervisor Signature

Date

HEALTH AND SAFETY CHECKLIST

The following checklist is designed to assess the overall safety of the alternate worksite. Each telework participant should complete the safety checklist. Upon completion, the checklist should be signed and dated by the employee and first level supervisor. The form should then be forwarded to the Managing Telework Officer. Do not complete if using GSA Telework Center.

Employee Name _____
 Date _____
 Address of the _____
 Alternate Worksite _____
 Telephone Number _____

Indicate Yes, No or N/A (Not applicable) to the following questions:

Work Station Setup

Yes	No	N/A	Question
			Temperature, noise, ventilation, and lighting levels adequate for maintaining your normal level of job performance?
			Adequate space to accommodate a typical NLRB work station to include: a desk, computer work station, communications equipment and file/reference storage?
			Telephone immediately accessible to the workstation?
			Privacy for confidential phone conversations?

Health/Safety

Yes	No	N/A	Question
			Surge protectors used for all applicable electronic equipment?
			Ergonomic accessories used for the work area such as chair, wrist pads, mouse pads etc?

 Employee Signature Date

 First level Supervisor Signature Date

 Second Level Supervisor Signature Date
 (if applicable)

ARTICLE 35 DETAILS

Section 1. General. The procedures set forth in this Article apply to the detailing of employees from one Regional, Sub-regional, Resident Office or Headquarters (including Division of Judges satellite) office (herein offices) to unit positions in other offices and to non-unit, non-supervisory or non-managerial positions in Headquarters for the purpose of alleviating temporary staffing imbalances.¹¹⁹

Section 2. Solicitation of Volunteers. (a) When the Agency decides to utilize detailees in a particular office, the Agency will identify the offices which are best able to provide assistance based on staffing levels and operating needs. The Agency will then solicit volunteers for the receiving office(s), and employees will have five calendar days to respond to the solicitation. Consistent with operating needs, the Agency will offer details to qualified employees in the order of their entry on duty (EOD) date. However, management may select a volunteer who is employed in an office in the same metropolitan area¹²⁰ as the receiving office without regard to EOD date.¹²¹

(b) The determination of the position(s), classification(s) and grade level(s) of employees needed for details will be made by management, consistent with operating needs, based upon the broadest possible range of employees.

(c) An employee who is offered a detail will have 5 calendar days to advise the Agency whether he or she will accept the offer, unless there

¹¹⁹ The term "detail" as used herein does not include individual case assignments or intra-regional (i.e., Resident Office or Sub-regional) casehandling matters, but rather refers to those situations in which an employee is temporarily assigned to a different duty station for a specific period of time, normally 30 days or longer.

¹²⁰ The applicable "metropolitan areas" are: San Francisco/Oakland-Regions 20, 32 and San Francisco Division of Judges; Los Angeles-Regions 21 and 31; and New York, Brooklyn, Newark-Regions 2, 22, 29 and New York Division of Judges.

¹²¹ The intent is that among volunteers in the same metropolitan area, consistent with operating needs, such volunteers will be selected in the order of their EOD dates.

is a compelling Agency need for a quicker response.¹²² Once an employee has accepted a detail pursuant to this Section; management will make every reasonable effort to reassign any casehandling duties which might preclude actual performance of the detail by the employee.

(d) Employees will not be involuntarily detailed. The selection of employees for assignments to details under this Article shall not be based on arbitrary or unreasonable considerations.

Section 3. Notice to NLRBU. Management shall notify the NLRBU of all details and of the employee(s) selected to serve under this Article.

Section 4. Notice to Employees. Employees selected for or assigned details pursuant to this Article will normally be given notice of the selection or assignment 10 calendar days in advance of the commencement of the detail; provided, however, where a critical need for the detail exists, the employee will be given notice of the selection or assignment 5 calendar days in advance of the commencement of the detail.

Section 5. Dual Lodging. Consistent with operating needs, employees detailed (to temporary duty stations away from their permanent duty stations) pursuant to this Article, will not normally be obligated to incur or suffer dual lodging expenses which would cause their total travel expenses for any particular day to exceed maximum allowable per diem rate. Where, however, the Agency assigns employees work which reasonably requires that employees incur dual lodging costs due to conditions beyond the employees' control, the Agency will approve payment of both expenses consistent with Comptroller General Decisions, e.g., 69 Camp. Gen. 73 (1989).

Section 6. Home Trips. Employees on detail pursuant to this Article will be reimbursed travel expenses incurred in connection with weekend trips to their respective residences and return trips to their respective temporary duty stations on the basis that 1 round trip will be authorized for each 30-day period of detail, e.g., one round trip if the detail is for at least 30 consecutive days; 2 round trips if the detail is for at least 60 consecutive days, etc.

¹²² The Agency will contemporaneously inform the NLRBU if employees are required to respond in less than five calendar days.

Section 7. Requests (or Hardship Details).¹²³ An employee desiring a hardship detail will make a request to the Assistant General Counsel for Labor and Employee Relations. Requests shall state the location of the desired detail, the requested duration, and the reasons for the request. The Agency will contemporaneously notify the NLRBU of the employee's name, and the office(s) to which the employee seeks to be detailed, and the length of the requested detail. If the employee's request is granted, the Agency will notify the NLRBU in accordance with Section 3 of this Article. Hardship details shall be presumed for the personal convenience of the employee, not in the primary interest of the Government, and shall be at no cost to the Agency.

¹²³ Examples of hardships are a situation in which an immediate family member of an employee, who lives outside the employee's home office area, has a serious illness or other medical emergency, to be near an employee's family member or partner who is outside the employee's metropolitan area for educational reasons, or circumstances where the employee is facing a serious threat to his or her personal safety. This does not preclude consideration of other circumstances to be a hardship.

ARTICLE 36
PROCEDURES FOR FILLING INVOLUNTARY TRANSFERS¹²⁴

Section 1. The procedure for involuntary transfer of employees from one office to another office on a permanent basis for the purpose of alleviating a staffing imbalance is set forth below. However, such procedure will not be utilized until the Agency has consulted in regard to and fully considered utilizing all other reasonable means to alleviate the imbalance, including, but not limited to, the transfer register, details, hiring, and attrition.

Section 2. Prior to making any involuntary transfers referred to in Section 1 above, the Agency will carry out the posting procedure set forth below for the purpose of soliciting volunteers for such transfers.

In the determination of the group of employees subject to the posting, the Agency will, after consulting with the NLRBU, designate the office(s)¹²⁵ and, consistent with operating needs, designate the broadest possible range of employees (positions, classifications and grades) within the office(s) from which volunteers will be sought and from which employees may be transferred involuntarily.

(a) The Agency will inform the President of the NLRBU and the President(s) of the local union(s) for the office(s) in which the posting(s) will occur and provide an advance copy of the posting(s) to the presidents.

(b) The posting in the office(s) will contain the following information: The position(s) and grade level(s) needed for the transfer(s), the office(s) to which the transfer(s) will be assigned, the numbers of transfer(s) needed, and a statement that in the event there are no volunteers (or an insufficient number of volunteers) the (remaining) transfer(s) may be filled by involuntary transfer from within the group specified in the

¹²⁴ The procedures of this Article do not apply to mandatory placement actions required in connection with the Agreement on Reduction-in-Force Procedures between the parties.

¹²⁵ Management retains its right under 5 U.S.C. § 7106(b) to determine the numbers, types and grades of employees or positions assigned to any office. However, when management determines, in the exercise of this right, that there are two or more offices from which it is willing to release an employee for an involuntary transfer, such transfer will be posted in each of these offices. Further, when management determines to reduce the staff of a particular office, it is understood that any posting under this Article will be limited to the particular office involved.

posting, or from within any smaller group of those offices.

(c) The posting will be open for 15 workdays. During the posting period, the Agency will make reasonable efforts to provide actual notice to employees within the posted group.

(d) Employees within the posted group who wish to volunteer for the transfer(s) will do so by notifying the Regional Director or Office Head, in writing, within the posting period.

(e) Management has the option of expanding the posting to include additional offices and/or groups of employees subject to the posting, provided the consultation, notice and posting copy provisions are met and the posting period conforms with Subsection (c) above. Further, if the number of volunteers is less than the number of positions needed to be filled, management has the option of eliminating from consideration, any office(s) from within the posted group prior to making involuntary transfers under this Article.

(f) Once an employee has volunteered for transfer pursuant to this Article, and has accepted the transfer in accordance with the procedures in Section 3 of this Article, the employee will be reassigned.

Section 3. Criteria for Selection for Transfers Posted Pursuant to Section 2 of this Article. (a) With respect to the selection for transfer of employees who have volunteered, the selection, if made, will be made on the basis of the criteria set forth in Article 33 (Transfers), Section 3 of this Agreement, provided however; that all such volunteers who meet the qualifications of the posting will be transferred before non-volunteers.

(b) With respect to the selection for transfer of employees who have not volunteered, the selection, if made, will be made from the employees in the posted position(s) in those offices designated under Section 2 above, on the basis of least Agency seniority in units represented by the NLRBU; provided that the Agency shall not be obligated to select employee(s) who has (have) been transferred into or converted to the position(s) posted unless the employee(s) has (have) the experience necessary to carry out the transfer in a competent manner, normally a minimum of 1 year in the position(s) posted.

(c) However, no employee will be involuntarily transferred for a second time pursuant to this Article until all other qualified employees

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within the group covered by the posting have been transferred once.

Section 4. Employees transferred pursuant to this Article will be given notice of the assignment 3 months in advance of the effective date of the transfer. During this period, except for extraordinary circumstances, the employee will not be involuntarily detailed.

Section 5. Subject to budgetary considerations, whenever the staffing imbalance that caused an involuntary transfer no longer exists, the involuntarily transferred employee will, if he or she so desires, be transferred back to the office from which he or she was transferred.

Section 6. Actions taken pursuant to this Article do not count toward management's obligation under Article 33 (Transfers), Section 4 of this Agreement.

Section 7. Stay of Transfer. In situations in which the Agency decides to transfer an employee for reasons related to conduct and/or performance, if a grievance or an appeal to an appropriate authority is timely filed, the transfer will not be effectuated until the issuance of an initial decision of the arbitrator or, as applicable, the appropriate reviewing authority, which does not reverse the Agency's decision to transfer; provided, however, that such stay of action shall not exceed 60 days from the date of the Agency's decision to transfer the employee.

ARTICLE 37
RESIDENT AGENTS

Section 1. Establishment of Resident Agent Position. (a) The General Counsel or the NLRBU may initiate discussions with the other party over whether a resident agent position at the full performance level should be established in a particular location. The parties will promptly and fully consult over this issue, taking into account the criteria listed below:

- Distance/travel time from a field office to the area in question;
- Volume and type of work generated in that area;
- Travel costs incurred in covering the work generated in that area;
- Consistency of work demands over time, e.g., over a 3-year period;
- Potential space reductions, if any;
- Potential relocation expenses, if any;
- Set up and operating costs;
- Administrative requirements;
- Staffing/operating needs;
- Service to the public;
- Other benefits to the government; and
- If consideration of establishing a position in a particular location was initiated by an employee, the employee's reason, the employee's reason for seeking the Resident Agent position and personal benefit, if any, to them.

As part of the above analysis, the parties will recommend to the General Counsel whether a position should be posted with or without relocation expenses paid by the Agency.

(b) The Agency will advise the NLRBU of the name of the unit employee, or the Region/Subregion of the supervisor or manager, who suggested creation of a Resident Agent position. The Agency shall provide contemporaneous notice to the NLRBU when an employee suggests that a Resident Agent be established.

(c) Following such consultations, the General Counsel shall decide, taking into account the above criteria and recommendations, whether a resident agent position should be established in a particular location, and such decision whether or not to establish a position shall not be subject to

the grievance and arbitration procedure.¹²⁶

Section 2. Competitive Procedures. Once a determination is made to establish a resident agent position in a particular location, the competitive procedures set forth below will be utilized in filling such vacancies.

(a) The position vacancy will be announced by a posting in the applicable area(s) of consideration which will indicate whether relocation expenses will be paid or the position will be filled on a no-cost basis.

(b) In the event that the first area of consideration, as described below, yields two or more eligible candidates who have stated that they will accept appointment to the position to be filled, the register will be limited to the first area and management will consider and exhaust this register before expanding the register to include candidates in the second area of consideration.

(c) If the first area of consideration does not yield the number of interested eligible candidates indicated above, a new register may be established which will include the candidate(s) from the first area of consideration, as well as eligible candidates from the second area who respond to the posting.

(d) After considering and exhausting the registers described above, management may, consistent with applicable law and regulation, fill the position without further resort to the competitive procedures of this Agreement.¹²⁷

(e) Management will provide the NLRBU with contemporaneous notice when resort is made to the second area of consideration and when resort is made beyond the second area of consideration.

Section 3. Areas of Consideration. (a) First Area – All professional employees at the full performance level with a summary performance rating of at least Fully Successful and a Commendable rating in Critical Elements 1 (Quality) and 2 (Effectiveness and Efficiency), or a summary

¹²⁶ The Agency will provide contemporaneous notice to the NLRBU if an employee accepts a resident agent position without payment of relocation expenses.

¹²⁷ Upon request, a copy of these registers will be provided to the NLRBU upon closing of the posting for each position.

performance rating of at least Commendable, who respond to an initial posting.¹²⁸

(1) who are employed in the Region where the position is located; and

(2) all write-in applicants who meet the applicable qualifications and who have, prior to the posting date, applied for consideration for a resident agent position within the Region's boundaries as set forth below.

(b) Second Area – All professional employees who meet the applicable qualifications, as described above, and who respond to a nationwide posting.

Section 4. Write-In Register. Employees of the Agency not included in the first area of consideration for a position to be filled competitively under this Article may enter the first area of consideration as defined above under the conditions listed below:

(a) Qualified unit employees must notify the General Counsel in writing that they wish to be considered in the first area of consideration for a resident agent position in a particular geographical location or within a particular Region's general boundaries on either a paid or a no-cost basis. Other Agency employees may by writing to the General Counsel also express their interest in such positions. Such employees will be evaluated and rated in a similar and equitable manner. The write-in register for the Region in question will reflect their interest in being considered for such a position.

(b) The written application must be received by the General Counsel before the applicable posting date.

(c) The written application will be in effect for a period of 1 year from its receipt by the General Counsel.

¹²⁸ Employees who are not employed in the Region and who have, prior to the posting date, expressed an interest in a resident agent position in the geographical location in question or within the boundaries of the region within which the position is being established will be provided with a copy of the posting so they can respond to the posting.

(d) The General Counsel will maintain a register for employees who qualify for these positions. Management will establish an electronic write-in register that will be available for viewing by employees and the NLRBU on the Agency intranet.

(e) All employees on the applicable register will be provided contemporaneous notice when a position is posted pursuant to Section 2.

Section 5. Application. In order to be considered for any resident agent position, any eligible employee in the applicable area of consideration must respond to the posting. The application will indicate that the employee will serve in that position for at least 2 years from the date that the employee starts working in the resident agent duty station. The employee must also indicate that he or she is aware of the transfer and reimbursement restrictions described below in Section 8.

Section 6. Rating and Ranking Process. (a) The rating official(s) will evaluate and rank candidates in the appropriate area of consideration on the basis of the following factors and shall rely on the appraisals of candidates, to the extent applicable,¹²⁹ in the consideration of such factors:

Presence of knowledge, skills and abilities required for the most effective performance of the specific job available;

(1) The quality and scope of past and present job experience and performance as it relates to the specific job;

(2) Estimation of individual potential; and

(3) Ability to perform high quality work independently and reliably with minimum supervision.

(b) The candidates rated the highest by the rating official(s) shall be designated as best qualified and they shall be certified, in writing, to the selecting official who shall be different from and at an organizational level above that of the rating official(s).

¹²⁹ Eligible employees who apply for these positions may request from their respective Regional Director(s) a written assessment of their performance in relation to the position of resident agent. This assessment will supplement the appraisals which will be considered by the rating and selecting official(s).

(c) Consistent with law and regulation, the selecting official may select any candidate on the best qualified list. Except for an allegation that an employee's non-selection is in violation of Article 4, Sections I, 2, 5 or 13, or any law or government-wide rule and regulation affecting conditions of employment, nonselection from a list of candidates properly certified and ranked in accordance with this Article shall not be subject to the grievance and arbitration procedure.

Section 7. Availability of Information. Upon completion of the Best Qualified List for the competitive position of Resident Agent, the Agency will inform all candidates (a) whether they were found eligible on the basis of the minimum qualification requirements; and (b) whether they were in the best-qualified group. Further, upon request the Agency will promptly inform an employee of the determining factors as to why he or she was not designated as best qualified. Employees who apply for the competitive position of Resident Agent will be informed promptly who was selected. The foregoing shall not waive the right of the NLRBU to receive any information to which it is entitled under law or this Agreement.

Section 8. Work Agreement, Reporting and Other Requirements. (a) The employee who has been selected for a resident agent position will sign a resident agent agreement and submit a form certifying the health and safety of the home worksite, and shall timely submit bi-weekly time and attendance reports.

(b) The General Counsel will provide the resident agent with necessary equipment, furniture and supplies, and will deliver and to the extent necessary, install any necessary equipment in the resident agent's home.

(c) Resident agents will be accessible to Regional management and supervision by telephone during the hours of the employee's regular office workday. Resident agents will follow established office procedures for field trips on official business and for requesting and obtaining approval of leave.

(d) Resident agents must make arrangements to provide daycare for any children or dependent adults requiring supervision or care who are with him/her during the hours in which he/she will be working at home.

(e) Resident agents will be provided with opportunities for inter-action with the Regional staff on a regular basis, and will receive training consistent with the provisions of Article 6.

Section 9. Transfer and Reimbursement Restrictions. In the absence of a compelling personal hardship or an agency initiated reassignment or promotion, a resident agent will not be eligible for a transfer to any other office within 2 years of the date in which he or she begins working at the resident agent duty station and will be responsible for reimbursing the Agency for any set up and relocation expenses incurred as a result of the assignment of the employee to this position if it is vacated by him or her within 1 year from the date that the employee begins working at the resident agent duty station.

Section 10. Disestablishment of Resident Agent Position. (a) On its own initiative or at the request of an employee, the General Counsel or the NLRBU may initiate discussions with the other party over whether to disestablish a resident agent position under the criteria set forth above in Section I. Both parties will fully and promptly consult over this issue, taking into account said criteria.

(b) Following such consultations, the General Counsel will decide, taking into account said criteria, whether a particular resident agent position should be disestablished and such decision shall not be subject to the grievance and arbitration procedure.

(c) Should the General Counsel decide that a particular resident agent position should be disestablished, the employee occupying such a position will be offered a transfer to the supervising Region, and the cost of said transfer will be paid to the extent permitted by law and government-wide rule and regulation in effect at the time of the transfer.

(d) Upon 3-month written notice to the Regional Director, the employee may seek to end his/her resident agent assignment.

Section 11. Involuntary Transfer of Resident Agent for Reasons Related to Performance or Conduct. (a) The provisions of Article 36, Section 7 will apply in situations in which the Agency decides to transfer a resident agent to a Region for reasons related to conduct and/or performance.

(b) The expedited arbitration procedures set forth in Article 16, Section 7 shall apply to grievances appealing transfers based on performance and/or conduct.

Section 12. Notice of Transfer. Resident agents transferred due to the disestablishment of the position or for reasons related to conduct and/or performance, will be given notice of this assignment 3 months in advance of the effective date of the transfer, absent mutual agreement to extend the date. During this period, except for extraordinary circumstances, the employee will not be involuntarily detailed.

ARTICLE 38
TRANSIT SUBSIDY PROGRAM

Section 1. Consistent with budgetary considerations, the Agency will maintain, consistent with government-wide rule and regulation, a transit subsidy benefit program for all employees who use qualified public transportation to commute to and from work.

Section 2. Under this program, qualified unit employees shall receive transit subsidy in an amount equal to their actual certified commuting costs, not to exceed the maximum level allowed by law. The Agency will maintain parity between field office employees and employees in the National Capital Region.

Section 3. For any delay in providing the transit subsidy benefit, bargaining unit employees may purchase transit passes with their own funds and submit an SF-1164 to the Agency for reimbursement of qualified expenses.

Section 4. In accordance with AB 11-13, employees must submit to the Human Resources Branch an annual recertification of their commuting expenses. In addition, employees must recertify their commuting expenses within one month of any change.

Section 5. *Bicycle Commuting Reimbursement Program.* (a) *Eligibility and Maximum Monthly Reimbursement.* Employees may be reimbursed up to \$20 per month for reasonable expenses incurred by a participant who uses a bicycle to travel to work. Monthly expenses greater than the \$20 per month reimbursement may not be amortized over a series of months. To qualify as a participating employee, an individual must regularly use a bicycle for a substantial portion of travel between the employee's residence and place of employment in the month in which the benefit is claimed. Reasonable expenses include the purchase of a bicycle or bicycle improvements, repair and storage. Reimbursement will be processed on a quarterly basis.

(b) Headquarters employees who wish to participate in the Bicycle Commuting Reimbursement Program must submit an NLRB Bicycle Commuting Reimbursement Benefit Program application form to the Human Resources Branch. Field office employees and Satellite Judges office employees must submit the application to their Office Manager or other designated manager who will forward the application to the Human Resources Branch for processing.

(c) (1) Bicycle Commuting Reimbursement and Other Transit Programs. A participating employee cannot participate in any other transit fringe benefit program such as a transit or vanpool subsidy in the same month that they receive the Bicycle Commuting Reimbursement. Therefore, employees who are currently receiving a transit subsidy and wish to participate in the Bicycle Commuting Reimbursement Program should submit a Transit Pass Application¹³⁰ and check the "withdraw" box when they switch to the Bicycle Commuting Reimbursement.

(2) If an employee plans to stop regular use of their bicycle for the fall and winter months and resume use of a transit subsidy, the participant will need to submit a new Transit Pass Application by the 25th day of the second month preceding the month for the transit subsidy to resume. For example, if the employee wants to switch from the Bicycle Commuting Reimbursement to a transit subsidy on November 1, the employee will need to submit a new Transit Pass Application by September 25. The employee cannot be reimbursed for any Bicycle Commuting expenses incurred in a month where a transit subsidy is received. To resume the bicycle subsidy in the spring the employee should submit a new Bicycle Commuting Reimbursement Application and Transit Pass Application withdrawal.

(d) (1) Claim for Reimbursement. Once an employee has enrolled in the Bicycle Commuting Reimbursement Program, the employee will need to submit a Claim for Reimbursement for Expenditures (SF-1164) to be reimbursed for qualified expenses. The SF-1164 should be submitted to the managerial official designated to approve travel vouchers and similar claim forms, along with receipts for all claimed expenditures.

(2) Frequency of Claims Deadline for Submission. The employee may submit an SF-1164 at the end of each quarter, or the employee may wait until the end of the cycling season to submit a claim. Because the income exclusion is for a 15 month period beginning with the first day of the calendar year, the SF-1164 must be submitted in time for payment to be made on or before March 31st of the following year.

¹³⁰ Headquarters employees should complete form NLRB-5514; Field office employees and Satellite Judges office employees should complete NLRB-5515.

ARTICLE 39
DURATION OF AGREEMENT

Section 1. This Agreement shall become effective on the date of execution and shall remain in full force and effect through December 6th 2016, and from year to year thereafter unless either party shall give to the other party written notice of intention to terminate or modify this Agreement no less than 60 days prior to its expiration date, provided that after such notice has been given, the parties may, by agreement, extend the Agreement for any agreed upon period beyond the expiration date.

Section 2. In the event any specific provision of this Agreement conflicts with existing or future law; governmentwide rule or regulation prescribed on or before the effective date of this Agreement; future governmentwide rule or regulation implementing future law or implementing 5 U.S.C. § 2302; or any other future governmentwide rule or regulation which, pursuant to law, takes precedence over such provision of this Agreement, the parties agree that, upon the request of either party, they will renegotiate concerning such provision.

Executed this 6th day of December 2013

FOR THE GENERAL COUNSEL: FOR THE NLRBU:

APPENDIX A
COMPUTATION OF TIME

Throughout this Agreement, there are references to acts, events or defaults which are related to a specific number of days. Some of those time references are established by regulation, whereas others have been contractually set. With the exception of those established by regulation and those which are already modified by the adjectives "working" or "calendar," the parties agree that when the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

The parties further agree that whether the number of days be established by regulation, be modified by the above-noted adjectives, or not be so modified, that in computing any period of time prescribed or allowed in this General Agreement, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next Agency business day.

APPENDIX B

The following procedures will apply when an Agency office relocation to a new facility is planned:

1. In conjunction with any future space acquisition process, the Agency will establish, to the extent that it is within its control, a Delineated Area (DA) within the Central Business District (CBD) of a city in which an NLRB office will be located. When the DA has been established, the Agency Security Officer or his or her qualified designee will implement one or more of the following actions to obtain information concerning crime statistics, lighting, visitor and employee safety, parking, and traffic flow:

(a) Contact the local Federal Protective Service (FPS) and request that a physical inspection of the DA be conducted and a report and recommendations on the results of that inspection be issued to the Agency covering the items listed in paragraph 1 above;

(b) Contact the local Law Enforcement Agency (LEA) and ascertain or verify the information listed in paragraph 1 above or request additional security/public safety data, if necessary;

(c) Conduct a physical survey, budget permitting, of the DA and interview, where appropriate, FPS and LEA officials in order to assess or verify the accuracy of the information provided by FPS and LEA officials concerning the items listed in paragraph 1 above; and prepare a report of his/her actions and findings, with recommendations regarding employee security.

2. Upon the selection of a building, if the selection is within the control of the Agency, the Agency Security Officer or his or her qualified designee will implement one or more of the following actions to obtain information concerning crime statistics, lighting, visitor and employee safety, parking, and traffic flow in the building vicinity:

(a) Contact the local FPS and request that a physical inspection of the building vicinity be conducted and a report and recommendations on the results of that inspection be issued to the Agency, covering the items listed in paragraph 2 above;

(b) Contact the local LEA and ascertain or verify the information

APPENDIX B

listed in paragraph 2 above or request additional security/public safety data, if necessary;

(c) Conduct a physical survey, budget permitting, of the building vicinity and interview, where appropriate, FPS and LEA officials in order to assess or verify the accuracy of the information provided by FPS and LEA officials concerning the items listed in paragraph 2 above; and prepare a report of his/her actions and findings, with recommendations regarding employee security.

3. (a) To the extent the selection of the building is within the control of the Agency, the Agency will consider the reports and recommendations listed in paragraph 1 above in making a space acquisition decision and site selection, and will implement the recommendations of the FPS and LEA which the Agency Security Officer or his or her qualified designee deems appropriate. If the selection of the building is not within the Agency's control, the Agency will take reasonable steps to assure that GSA or other selecting agency implements the recommendations of the FPS and LEA which the Agency Security Officer or his or her qualified designee deems appropriate.

(b) After the building site has been selected, the Agency will consider the reports and recommendations listed in paragraph 2 above and will implement the recommendations of the FPS and LEA which the Agency Security Officer or his or her qualified designee deems appropriate.

APPENDIX C
SUMMARY OF INFORMATION TO BE PROVIDED TO THE
NLRBU

For ease of reference, a list of information that is provided to the Union on a routine basis is below:

(a) Biweekly and monthly reports which show all accessions, separations, transfers, reassignments and promotions for all Agency employees;

(b) On an annual basis, list of employees in the unit to include name, position title, grade, Step-in-grade, Agency EOD, and date of last promotion (info. to be prepared as of the first full pay period of the year and delivered within 15 working days after the cutoff date);

(c) All General Counsel Memoranda, Operations Management Memoranda, Administrative Bulletins, Administrative Policy Circulars, promotion ("write in") registers, resident agent registers, transfer registers, and no-cost transfer lists (to be posted on the Agency intranet); and all writings issued from Headquarters which pertain to general conditions of employment of employees distributed to all or groups of employees;

(d) Information regarding the expenditure of funds under Article 7, and the list of courses which have been approved and denied (semiannually);

(e) A copy of any revised "position descriptions" on a current basis;

(f) New or revised unit position descriptions in time for the parties to consult and, where required by law, to negotiate regarding their application, before such position descriptions are put into effect;

(g) Monthly report of performance awards, including quality step increases, honorary awards, and incentive awards (including bilingual awards), granted to employees;

(h) APPM and access to the CFR, unless available to such union officers on the Internet, Intranet or Westlaw;

(i) Initial space layout proposal;

APPENDIX C

(j) List of the expiration of all Agency office leases, updated as necessary;

(k) Report on progress in the implementation of the Agency's Equal Employment Opportunity Program, including reports pursuant to EEOC MD-715;

(l) Supplemental dues report showing the names of employees, their Social Security number (last four digits), their location, the amount deducted for each employee, and the total amount of dues withheld for the pay period in question (normally within 2 weeks after the pay day of the applicable pay period); requests for revocations of dues withholding;

(m) Notice of details and of employees selected; notice of employee requests for hardship details consistent with Article 35, Section 7 and hardship transfers consistent with Article 33, Section 5(b), and of the Agency's decision to grant transfer requests;

(n) Requests to establish resident agent positions; and

(o) An advance copy of the posting when soliciting for volunteers prior to an involuntary transfer.

The above information will be provided to the NLRBU electronically (i.e., by e-mail) to the extent practicable. However, this will not be construed as a waiver of the Union's right to hard copies for such purposes as litigation. Dues reports and information, which may contain handwritten comments, will routinely be provided by hard copy.

APPENDIX D TRAVEL CLAIMS

Section 1. The procedures in this Article apply to Agency disallowances of an employee's claim for reimbursement of travel expenses, including any portion thereof.

Section 2. Bases for Disallowing Claims (a) Pursuant to the Federal Travel Regulation (FTR) 301-71.205, the Agency may disallow a claim if the employee (1) does not properly itemize expenses; (2) does not provide required receipts or other documentation to support the claim; or (3) claims an expense which is not authorized.

(b) In addition, these procedures will be followed in the case of a claim that requires corrections in order to be processed.

Section 3. Initial Review by Approve (a) Vouchers are initially approved by the Office Head or their designee. Management will review and approve vouchers for payment within 3 working days after filing. If Management disapproves a claim or portion of the claim, it will notify the traveler of the disapproval and the reasons there of. The traveler will be given a reasonable opportunity, but no longer than 5 working days,¹³⁰ to provide further information to support his or her claim and to discuss the issues with Management. In the event the issues are not resolved, the preparer will submit an electronic voucher for the undisputed amounts, and Management will promptly process the undisputed claim. The disputed amounts should be submitted in accordance with the appeal process below.

(b) In the event that an electronic voucher is incorrectly filed and cannot be processed because of format or coding errors, the Finance Branch will promptly provide the reason for the disallowance in the remarks section of the claim and will return the claim to the preparer for corrective action. If the voucher was prepared by someone other than the traveler, the preparer will promptly provide information to the traveler as to the basis of the disallowance and will promptly correct the

¹³⁰ In situations where there are extenuating circumstances, such as extended leave, heavy work load, employee illness or that of the employee's family, the Management will grant a reasonable additional period of time for the submission of supplemental information and to discuss the issues raised.

deficiency.¹³¹ Once the voucher is corrected, the claim will be promptly paid.

Section 4. Appeal of Disallowed Claims. If the Office Head (or his or her designee) or the Agency Finance Branch disallows a travel claim, the following appeal procedures will apply:

(a) Employee Notification. The Agency will advise the employee, in writing, that the claim has been disallowed. The statement will include an explanation of the specific reason for the disallowance.

(b) Request for Reconsideration. An employee may request reconsideration of a disallowed claim if he/she has additional facts or documentation to support the request for reconsideration. To request reconsideration, the employee should submit a written statement to the Finance Branch.

(c) Appeal Process. If the Agency denies the employee's request for reconsideration, the following procedure applies:

(1) The employee will prepare a paper SF-1012, Travel Voucher, claiming the disallowed amount and write "Supplemental Voucher" at the top of the form. All paper vouchers must have original signatures. The employee will provide a full explanation of the circumstances and the reasons for considering the amount reimbursable and attach the statement to the voucher. E2 cannot be used to process disputed vouchers.

(2) The employee must also provide the following:

(A) full itemization for all disallowed items reclaimed;

(B) receipts for all disallowed items reclaimed that require receipts;¹³²

(C) a copy of the notice of disallowance; and

¹³¹ In order to facilitate this process, any traveler who requests it will be granted access to the electronic voucher system. Nothing herein shall require any traveler to use the electronic voucher system to prepare a travel voucher.

¹³² If it is impracticable to furnish receipts in any instance as required by FTR 301-52.4, the failure to do so must be fully explained on the travel voucher. Mere inconvenience in the matter of producing receipts will not be considered.

(D) the proper authority for the claim if challenging the NLRB application of the law or statute.

(3) If after review by the Finance Branch the claim is still denied, the employee may submit his/her claim for review to the Director of Administration within 10 working days after the claim is denied. If the claim is approved, it will be forwarded to the Finance Branch for prompt payment. If the claim is denied by the Director of Administration, a written notification will be sent to the traveler with a detailed explanation of the reason, including the proper authority for the denial within 21 days after receipt of the appeal.

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Appendix E

NxGen

This Appendix applies to NxGen in the Agency's field offices and covers field office professional and support staff employees.¹³³

A. Employee Responsibilities and Work Flow.

1. The normal operating procedures are that support staff scan and professionals upload.
2. When there are competing work assignments, management will advise the employee of the priority to give to the assignments. In determining the priority, management will consider the employee's other assignments and work schedule.
3. Professional employees will prepare a barcode for each document to be scanned. However, where multiple documents of the same type are to be scanned (e.g., affidavits), the professional may complete the first barcode in full and, in the work order section, give sufficient information to enable a support staff employee to complete the remaining barcodes in the same fashion except for the unique identifier (e.g., all barcodes are AFF.1-CA-10000 and unique identifier should be the last name of each affiant).
4. Digital files will be kept current.
5. The Agency will provide Resident Agents with scanners with sheet feeders that will enable them to scan into NxGen.

B. NxGen Work Flow Improvement Committee.

1. The NLRBU and the Agency shall each name three representatives that will serve on a NxGen Work Flow Improvement Committee. The Committee shall seek ways to improve NxGen to make it more efficient and easier for employees to use. The Committee may solicit employee suggestions for improvement. The Committee shall meet bi-monthly and

¹³³ The Agency will notify the Union when and if it intends to implement NxGen among Union-represented employees in Headquarters (General Counsel-side and Board-side) and, to the extent required by law, will bargain, upon request, with the Union over Headquarters implementation.

may meet more often as needed. The Committee shall report to the NLRBU and Agency on the field and headquarters issues discussed and how the issues have been resolved.

2. NLRBU representatives will receive reasonable amounts of official time for meetings, preparation and follow through, and will follow office and contractual procedures for requesting approval of official time.

C. Encouragement of E-Filing.

The Agency will make the maximum effort to publicize the availability of e-filing and will, through outreach, publicity and other appropriate means, encourage outside parties to submit documents through e-filing to the maximum extent possible. The NxGen Workflow Improvement Committee described above in Section B will discuss how to accomplish this.

D. Mid-Term Bargaining Over NxGen.

1. Unless it is clear that a matter at issue was specifically addressed by the parties in this Appendix, the subject is appropriate for mid-term bargaining.

2. The Agency recognizes that, when a change is made to NxGen that has more than a de minimis adverse effect upon the working conditions of bargaining unit members, and to the extent that the matter is not specifically addressed in this Appendix or another provision of the Agreement, it will bargain with the NLRBU in accordance with law and the terms of this Agreement.

3. If the NLRBU seeks to negotiate, prior to implementation, regarding significant changes adversely impacting working conditions of employees, and requests that the Agency delay implementation of the changes until the completion of bargaining, then following expedited procedures shall apply:

a. Each party may have up to three (3) individuals on its bargaining team.

b. The NLRBU negotiators will each be granted reasonable amounts of official time for preparation, travel, attendance at any sessions, and follow through for: (a) negotiations; (b) mediation, if necessary; and (c) impasse proceedings, if necessary.

c. The NLRBU will notify the Agency, within five (5) workdays from the time the Agency apprises the Union of the particular change (unless mutually extended by the Parties), that the Union seeks to negotiate prior to any implementation of the change. If no such notice is provided, the Agency is free to implement the change prior to negotiations. The failure to provide such notice will not waive the Union's right to negotiate, after implementation, using the non-expedited contractual mid-term bargaining procedures, regarding any changes in NxGen which have adverse effects on the working conditions of bargaining unit members that are more than de minimis and which are not specifically addressed in this Appendix or any subsequent agreement.

d. Initial negotiations will be conducted by teleconference or videoconference. The NLRBU negotiators will be on official time during such negotiations.

e. Written proposals will be exchanged within ten (10) workdays of the NLRBU notification, unless the parties agree to a different date. The initial bargaining session will be conducted within three (3) workdays after the exchange of proposals.

f. If there is no agreement within fifteen (15) workdays of the initial bargaining session, the parties will jointly request expedited assistance from the Federal Mediation and Conciliation Service (FMCS). The NLRBU negotiators will be on official time during any FMCS proceeding. The parties will ask the FMCS mediator to conduct mediation by teleconference or videoconference.

g. If the parties are unable to resolve the dispute with FMCS assistance, they will jointly request expedited assistance from the Federal Service Impasses Panel (FSIP). The parties will jointly request that FSIP resolve any impasse through the use of its expedited arbitration procedure, which includes the use of an FSIP in-house arbitrator and the issuance of a written decision within 48 hours of the close of the proceeding. The NLRBU negotiators will be on official time during any FSIP proceeding.

h. In the event that either FMCS or FSIP, or both, require that the Parties appear in person at any proceeding, the Agency will pay 50 percent of the reimbursable travel expenses of no more than three NLRBU negotiators up to a maximum total reimbursement of \$1,500.

ADDENDUM

The parties hereby agree to the following corrections to this Agreement, to restore two footnotes that were inadvertently left out of the agreement:

Article 12, Section 3(b)(2), page 82: At the end of the paragraph, footnote 34A is inserted, which states:

“Quality Step Increases are effective the first pay period after the anniversary date. However, where an employee is also entitled to a promotion or a regular step increase on that date, the Quality Step Increase will be the last personnel action of that date and processed after the aforementioned actions.”

Article 37, page 243: In the title of the Article, following the word “Agents,” footnote 125A is inserted, which states:

“This Article is applicable to field professionals only. This Article does not apply to Agency restructuring actions such as office closings or staff reductions other than through attrition.”

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