

**Master Labor Agreement
between
The Centers for Medicare
& Medicaid Services
and the
American Federation of
Government Employees,
Local 1923, AFL-CIO**

The effective date of this agreement is
July 10, 2017

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Preamble

This Agreement is entered into by and between the Centers for Medicare & Medicaid Services (formerly, the Health Care Financing Administration) (hereinafter referred to as “the Agency” or “management”) and the American Federation of Government Employees, AFGE, AFL-CIO (hereinafter referred to as “the Union”) (collectively referred to as “the Parties”) pursuant to the statutory authority of the Federal Service Labor-Management Relations Statute (FSLMRS), Chapter 71 of Title 5 of the United States Code (U.S. Code).

Recognition and Coverage in this Agreement

AFGE is recognized as the exclusive representative of all professional and nonprofessional General Schedule and Wage Grade employees employed by the Centers for Medicare & Medicaid Services in accordance with the Certificate of Clarification of Unit, Case No. WA-RP-01-0108, approved by the Federal Labor Relations Authority (FLRA) on August 16, 2002, as follows.

Included:

All professional and non-professional General Schedule and Wage Grade employees employed by the Centers for Medicare & Medicaid Services.

Excluded:

All management officials, supervisors, student assistants, student aides employed under the “stay-in-school” program, and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6) & (7). This Agreement covers all employees pursuant to said recognition.

The Parties further agree that should the Union request certification to include subsequently organized groups of employees in the unit described above, and the FLRA determines that the combined unit would be an appropriate unit under the law, the Agency will not oppose the certification of the unit. Upon certification of the unit, the subsequently organized groups of employees will automatically be covered by this Agreement. Nothing in this section will be construed as a waiver of the Agency’s right to oppose the appropriateness of the unit in any FLRA proceedings.

Article 1: Governing Laws, Regulations, and Definitions

Section 1. Relationship to Laws and Government-Wide Rules and Regulations

The Parties will be governed by this Agreement, existing and future laws, existing Government-wide rules and regulation, and subsequently-enacted Government-wide rules and regulation implementing 5 U.S.C. § 2302 in accordance with 5 U.S.C. Chapter 71.

Section 2. Other Agreements

Any Memoranda of Understanding, Memoranda of Agreement, or any other written agreements between the Parties that pre-existed this Agreement and that are not covered by this Agreement shall be treated as past practices and shall not be changed except in accordance with 5 U.S.C. Chapter 71.

Section 3. Past Practices

In order to change any past practices that were in effect on the effective date of this Agreement and that are not covered by this Agreement, the Agency shall provide notice and, upon request, bargain with the Union to the extent required by law and in accordance with the mid-term bargaining provisions of this Agreement.

Nothing in this Agreement shall affect the Union's right to initiate mid-term bargaining, in accordance with its entitlements under the Federal Service Labor-Management Relations Statute.

Section 4. Definitions Applicable to this Agreement

"Days" means calendar days, unless otherwise specified.

"Employee" means bargaining unit employee, unless otherwise specified.

"Position" means bargaining unit position, unless otherwise specified.

Article 2: Labor-Management Cooperation

Section 1. Principles of Cooperation

The Parties agree to honor the following general principles of labor-management cooperation:

- A. Recognize that a cooperative and effective labor-management relationship promotes the increased quality, productivity, performance, and effectiveness of the Agency in pursuit of its mission and fosters a positive working environment for Agency employees;
- B. Work cooperatively with an emphasis on informing and involving the Agency's employees through their exclusive representative in identifying problems, mutually sharing information, and with the goal of increasing the likelihood of adding value to the quality of Agency decisions to better serve the Agency and its customers;
- C. Serve as a model of collegial and cooperative behavior by identifying and emphasizing mutual interests where possible, rather than exclusive rights or conflicting bargaining positions; and
- D. Work to build a relationship that promotes mutual trust, respect, and appreciation for each other's roles and responsibilities.

Section 2. Labor-Management Cooperation Committee

- A. To give meaningful effect to the above principles, the Parties will establish an Agency-wide Labor-Management Cooperation Committee (LMCC).
- B. The LMCC will be comprised of 12 members with an equal number of Management and Union representatives. The Parties will appoint appropriate members to serve on the LMCC in order to facilitate the principles of this Article.
- C. The LMCC will meet quarterly in the Agency's single site location. Other locations may be mutually agreed to by the Parties.
- D. The Agency will reimburse the Union for travel and per diem expenses for two Union representatives to attend the quarterly LMCC meetings.
- E. The Agency will authorize official time for Union representatives' attendance at quarterly LMCC meetings and related travel.
- F. The LMCC will serve as a forum for mutual exchange of information and discussion of items of mutual interest to the Parties and promote the principles of labor-management cooperation throughout the Agency, whenever possible. However, the Parties acknowledge that the LMCC will not be used as a substitute for fulfilling or exercising bargaining obligations or rights under applicable law or the mid-term bargaining provisions of this Agreement.
- G. A forum for labor-management cooperation between Regional Office Management and Union officials will be established and maintained where it is mutually agreed upon. Any forum will operate in accordance with the principles of this Article and the acknowledgement in Section 2.F. The Agency will authorize official time for Union representatives' attendance at any mutually agreed-upon meetings.

Article 3: Employee Rights

Section 1. Right to Unionism

- A. Each employee will have the right to join, or assist the Union, or to refrain from such activity, freely and without fear of penalty or reprisal, and each employee will be protected in the exercise of such right. Except as otherwise provided under law, such right includes the right:
 - 1. To act for the Union in the capacity of a representative, and the right, in that capacity, to present the views of the Union 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.
- B. All employees will be given three hours of duty time during the thirty days after implementation of this Agreement to read its provisions. This time must be used to read the Agreement at the employee's workstation and is subject to supervisory approval.
- C. All new employees to the bargaining unit will also be provided three hours of duty time to read this Agreement within the first two weeks of their start date, subject to supervisory approval.

Section 2. Whistleblower Protection

In accordance with 5 U.S.C. § 2302(b)(8) and the Whistleblower Protection Enhancement Act of 2012, employees will be protected against reprisal for the disclosure of information which the employee reasonably believes evidences a violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Section 3. Individual Employee Personnel Records

- A. No individual employee personnel records may be collected, maintained, retained, or disclosed by the Agency except in accordance with law and Government-wide rule or regulation, including the provisions of the Privacy Act, 5 U.S.C. § 552a.
- B. Individual employee personnel records include the Official Personnel Folder (OPF)/eOPF, the Employee Performance File System of Records (EPF), and the Employee Medical File System of Records (EMF) as prescribed under 5 C.F.R. Part 293. The eOPF can be accessed via the HHS Access Management System (AMS). Other individual employee personnel records, which may be collected, maintained, and retained, are subject to Privacy Act requirements that are provided for in the Office of Personnel Management's Privacy Act notice. They include records such as: general personnel records, records of adverse actions, performance-based reduction in grade and removal actions and resignation/termination of probationers, recruiting, examining and placement records, applicant race, sex, national origin, and disability status records, and position classification appeal records.

- C. All individual employee personnel records are confidential and must be retained in a secure location. In accordance with the Privacy Act, 5 U.S.C. § 552a(b)(1), disclosure of individual employee personnel records are prohibited without prior written consent of the individual to whom the record pertains, unless the disclosure is to Agency employees who have a need for the record in the performance of their duties or where otherwise lawfully permitted.
- D. Employees and/or their authorized representatives, who have been so authorized in writing, have the right to examine any of their individual employee personnel records in the presence of a management official. Upon request by the employee, a reasonable amount of duty time will be granted for this purpose by the employee's manager. Access to official personnel records will be granted within two working days of the request if the records are maintained on the premises where the employee is located. If records are not so maintained, the Agency will immediately initiate action to obtain the records from their location and will make them available to the employee as soon as possible. Grievance time limits will be stayed in the event of undue delay in the provision of relevant individual employee personnel records requested in accordance with this paragraph.

Section 4. Supervisory Working Files

- A. Individual managers may maintain a supervisory working file (also known as "supervisory working folder") on each of their employees. These files are subject to the same collection, maintenance, retention, and disclosure requirements pertaining to other individual employee records, including the provisions of the Privacy Act, 5 U.S.C. § 552a.
- B. Supervisory working files are used by managers in carrying out personnel management responsibilities. As such, these files may include documents concerning individual employee development plans, recommendations for awards, training plans or history, discipline or performance, and other such records the manager determines to be appropriate for carrying out his/her ongoing personnel management responsibilities.
- C. Supervisory working files should be kept in a secure location, e.g., a locked desk, cabinet, password-protected electronic files, etc., to ensure their security and confidentiality.
- D. Employees will be notified and given a photocopy of any documents placed in their supervisory working file within three working days after the document is placed in the file by the manager. Upon request, employees may review the documents contained in the supervisory working files in the presence of a designated management official.
- E. The files will be screened and purged on a regular basis.

Section 5. Memory Joggers

- A. Managers may prepare and retain memory joggers concerning individual employees.
- B. Memory joggers are private notes retained and used for the personal use of the manager to recall events or aid memory. Memory joggers may be prepared, retained, or discarded at the author's discretion. Memory joggers will not be provided to any person.

- C. These records are not individual employee personnel records subject to the requirements of the Privacy Act or records subject to the requirements of 5 U.S.C. § 7114(b)(4).
- D. The Union is not entitled to a manager's memory joggers under this Agreement.

Section 6. Right to Union Representation

- A. If an employee wishes to discuss a representational matter or report a possible violation of this Agreement with a Union representative on duty time, the employee shall request from his/her manager to be released from duty for the approximate time it will take to hold the discussion. An employee cannot be required by his/her manager to provide the specific circumstances surrounding his/her need to contact a Union representative.
- B. If the discussion will take place away from the worksite, the employee shall identify the location where he/she can be contacted.
- C. The manager (his/her designee or second-line manager, in the event of the absence of the manager) will release the employee from duty unless the manager determines that the presence of the employee at the worksite is necessary to meet current or immediate work requirements.

Section 7. Investigatory Examinations (*Weingarten Meetings*)

- A. A representative of the Agency will inform the employee of the general purpose of any meeting that the employee is asked to attend that the Agency representative believes may result in disciplinary action. In accordance with 5 U.S.C. § 7114(a)(2)(B), a representative of the Union will be given an opportunity to be present at any examination, discussion, or interview involving an employee if the employee reasonably believes (either prior to or during the examination, discussion, or interview) that a disciplinary or adverse action may result and the employee requests such representation. These meetings are often referred to as "investigatory examinations" or "*Weingarten*" meetings.
- B. The Agency and/or the Department of Health & Human Services will electronically distribute a semi-annual notice to all employees advising them of their right to representation in such examinations and investigations if they so request such representation. In addition, the Agency will post an annual notice of "*Weingarten*" rights on the CMS intranet.
- C. Prior to an administrative investigation conducted by the Division of Workforce Compliance, or its designee, the Agency will advise employees in writing of their right to request Union representation. The employees will receive a separate document stating only that, "You have a right to request Union representation prior to or at any time during this investigation."
- D. Not every management initiated discussion is an investigatory interview that triggers an employee's "*Weingarten*" rights. For example, a supervisor may:
 1. Talk to an employee about the proper way to perform an assignment;
 2. Conduct a performance evaluation;
 3. Issue a verbal warning; or

4. Deliver a decision already made.
- E. An employee may invoke “*Weingarten*” rights (i.e., request that a Union representative be present) when the employee reasonably believes that an investigatory interview is likely to result in disciplinary action. After the employee makes a request for Union representation, the manager can:
1. Grant the employee’s request for a Union representative and wait a reasonable amount of time for the Union representative to arrive;
 2. Deny the employee’s request for a Union representative and end the meeting immediately; or
 3. Give the employee the choice of either:
 - a. Ending the meeting; or
 - b. Continuing the meeting without Union representation.

Section 8. Formal Discussions

The Union will be given the opportunity to be represented at all formal discussions as defined in 5 U.S.C. § 7114(a)(2)(A). The Agency will notify the Union designee as far in advance of the formal discussion as is reasonably possible under the circumstances. The Union representative will be acknowledged at the start of the formal discussion and given an opportunity to participate, which includes the opportunity to speak, comment, and make statements. However, the Union representative will not interfere with or disrupt the meeting or its purpose. The Agency is under no obligation to delay the start of the meeting if the Union representative is not present.

Section 9. Privacy Act Protection for Collection of Information

In conducting investigations that may result in an adverse determination about an employee’s rights, benefits, and privileges, the Parties are reminded that the Privacy Act requires that, to the greatest extent practicable, information should be collected directly from the subject employee.

Section 10. Duty of Respect

Employees and managers will be treated with mutual respect. Employees and managers should refrain from coercive, intimidating, loud, or abusive behavior. Such behavior will not be tolerated in the workplace.

Section 11. Warrants and Subpoenas

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

Section 12. Lawful Orders

No employee will be disciplined or retaliated against solely as a result of carrying out the lawful instructions of an Agency management official with real or apparent authority. If there is a

disagreement between the employee and the management official, the employee will comply with the instructions and, if desired, grieve the matter later.

Section 13. Retirement

- A. An employee's decision to resign or retire will be made freely and in accordance with applicable law and Government-wide rule or regulation. The Agency agrees to provide retirement seminars, free of charge, to employees who are within five years of retirement eligibility. Employees also will not be required to take leave to attend these Agency-sponsored seminars and are authorized to attend no more than one in a 12-month period.
- B. If an Agency on-site retirement seminar is not being offered in a given calendar year, or an employee for legitimate reasons is not able to attend an Agency offered on-site seminar in the calendar year, the employee may attend a local federally-sponsored retirement seminar without charge to leave. Any cost of that seminar will be at the expense of the employee. Managerial approval is required and will be based on workload exigencies.
- C. For planning purposes, employees who are eligible for retirement are encouraged to inform their managers as early as possible regarding their anticipated date of retirement; however, the Parties understand that an employee's decisions regarding retirement are subject to change at the sole discretion of the employee. Employees wanting information about retirement should contact their servicing Benefits Specialist in the human resources office or the CMS Human Resources Center at hrcenterhelpdesk@cms.hhs.gov or 1-888-423-2737.
- D. Before the Phased Retirement portion of Public Law 112-141 (Moving Ahead for Progress in the 21st Century Act (MAP-21)) is implemented, the Agency will provide notice and, upon request, bargain with the Union in accordance with Article 4 of this Agreement and to the extent required by law.
- E. An employee may request to withdraw a retirement application at any time prior to its effective date.

Section 14. Merit System Principles and Prohibited Personnel Practices

Personnel management shall be conducted in accordance with the provisions of 5 U.S.C. § 2301, Merit System Principles, and 5 U.S.C. § 2302, Prohibited Personnel Practices. All employees should 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 handicapping condition, and with proper regard for their privacy and constitutional rights, in accordance with 5 U.S.C. § 2301(b). These sections will be made available electronically to all employees.

Section 15. Personal Rights

Any observation or complaint regarding an employee's conduct or performance that may be used to propose discipline or a performance-based action in accordance with Article 21 or Article 23

of this Agreement will be brought to the attention of the employee as soon as practicable after the event.

Section 16. MyPay

All employees are required to use myPay, or successor system, to process his/her payroll and personnel information. Employees who have physical impairments will receive assistance, upon request, in order to process his/her payroll and personnel information using myPay. Information about how to access myPay will be on the Agency's intranet.

Section 17. Compensation

- A. All employees are entitled to timely receipt of all wages earned. Employees are responsible for reviewing their leave and earnings statements upon receipt and notifying their managers and their servicing Benefits Specialist in the human resources office of any unexplained changes or irregularities.
- B. All employees are required to use direct deposit for salary payment unless the employee meets the requirements for waiver under 31 C.F.R. Part 208.
- C. Employees who do not receive timely wages may request special salary pay. If appropriate, a special pay payment will be issued promptly after notification by the employee to the Agency's human resources office at 1-888-423-2737. Obtaining a special pay payment under false pretenses may serve as the basis for disciplinary action.
- D. Employees are responsible for arranging for the timely repayment of overpayments. Where employees have been overpaid, the Agency will advise employees of the procedures available and provide the necessary forms for filing a request for waiver of all overpayment of pay received in good faith.

Section 18. Voluntary Activities

Employee participation in the Combined Federal Campaign, Blood Donor Drives, Bond Campaigns, or other worthy projects will be on a voluntary basis. This does not preclude giving general publicity and encouragement to employees to participate. Participation or nonparticipation will not advantage or disadvantage employees. Employees who desire to participate in voluntary activities that are not Agency-sponsored or approved should consult with the Agency's ethics office to be sure there is no ethical conflict between the employee's official duties and the voluntary proposed activities and that the appropriate ethics forms are completed.

Section 19. Dress Code

- A. A dress code promotes the Agency's professional image to our beneficiaries, providers, and other stakeholders and focuses attention on excellence and professionalism in the performance of the Agency's mission.
- B. Employees are expected to dress neatly, professionally, and in a manner that is appropriate for their assigned duties.

- C. On Monday through Thursday, employees are expected to dress in appropriate business office attire. Managers may grant exceptions based upon the nature of work assignments or the location in which the work is being performed.
- D. On Fridays, employees may choose to dress in business casual attire. Business casual attire is neat and professional attire that reflects an appropriate, positive image of the Agency while promoting a comfortable work environment for employees.

Section 20. Assignment of Space/Cube Sharing

- A. Employees who are regularly scheduled to be out of the office more than two days per week for any reason(s), except official travel (e.g., telework, part-time schedule, alternative work schedule), do not have guaranteed assigned space and may be required to cube share, use hoteling stations, or work from an alternative location at any time.
- B. Employees who are out of the office for five days or more in a pay period (e.g., employees on a 9 ½-hour flextime schedule with two days per week of scheduled telework) may also be required to cube share, use hoteling stations, or work from an alternative location at any time.
- C. The Agency will make available the names and locations of employees required to cube share in order to facilitate employee-selected cube sharing arrangements. Employees must seek approval from their manager to select a cube outside of the employee's currently approved location. Employees will be given at least 10 working days to self-identify a cube sharing arrangement. If they are unable to do so within the established timeframe, the Agency may make the cubicle assignment.
- D. Employees who are required to share cubicles may need to change their work schedules to make cube sharing possible. If the employees do not agree on a compatible schedule, the employee with seniority based on Service Computation Date (SCD) will be able to retain their current work schedule.

Section 21. Physical Moves/Relocations

- A. The following procedures will be used for physical moves/relocations due to an Agency reorganization or realignment or other change of physical location of an entire staff, branch, division, or larger organizational component, for employees in positions at the GS-13 level and below.
 1. Employee workstation assignments will be based upon seniority. Seniority is based on the employee's Service Computation Date (SCD) as shown in Item 31 of their most recent Standard Form 50 or Item 11 of their most recent HHS "Civilian Leave and Earnings Statement." If SCDs are the same, the higher numeral in the Social Security Number (SSN) will be used as a tiebreaker, starting with the first digit (e.g., if the first digits in two SSNs are 8 and 6, 8 gets preference).
 2. As soon as the new work space is available, employees will be allowed to walk through it during the Agency's tour of duty.
 3. After having placed employees at higher grades, non-bargaining unit employees, employees requiring reasonable accommodations and employees in special

circumstances such as special assistants and administrative staff, management will email the Union's Principal Designee and display the related floor plan and a list of affected bargaining unit employees ranked by their SCDs in an area accessible to affected employees during the applicable tour of duty, to make workstation selections. (Employees' SCDs will be shown on the list sent to the Union.) The employees and/or their designee will place their workstation selection on the list by their name. If an employee and/or his/her designee fails to make a workstation selection in the allotted time, the Agency will make the workstation selection for that employee.

4. The employee's telephone number will be transferred to the new workstation when within the same duty station.
- B. When the Agency is moving employees to a new facility not currently occupied by CMS employees, the Agency will provide notice and, upon request, bargain with the Union in accordance with Article 4 and to the extent required by law. However, every move after that initial notice is given will follow the procedures outlined in Part A of this section.

Article 4: Negotiations During the Term of the Agreement

Section 1. Agreement to Bargain

All bargaining will occur at the level of recognition. The Agency and the Union, through appropriate representatives, will meet and negotiate in good faith for the purpose of collective bargaining as required by law and this Agreement.

If face-to-face negotiations occur, the location of bargaining will be the Agency's National Headquarters in Baltimore, MD, unless the Parties mutually agree to another location. If face-to-face negotiations occur, the Agency will pay travel and per diem expenses for two Union negotiators. Payment of travel expenses and per diem will be governed by applicable law, the Department of Health & Human Services' (HHS) supplemental policy guidance (HHS Travel Manual), the Agency's Travel Handbook, and Government-wide rule and regulation.

Section 2. Procedures for Bargaining Changes in Conditions of Employment

A. The Agency will provide the Union with reasonable advance written notice prior to the proposed implementation date of changes affecting conditions of employment subject to bargaining. The notice will contain the following information:

1. The nature and scope of the proposed change; and
2. The proposed implementation date.

NOTE: When any Agency management official wants to make a change affecting bargaining unit employees' personnel policies, practices, or conditions of employment, to the extent such changes are not covered by this Agreement, the Union must be given reasonable notification of the proposed change, as required by law, and the right to request bargaining.

- B. The Union will be provided 10 working days from receipt of the notice to request to bargain. With the Union's request to bargain, the Union may: (1) submit written bargaining proposals; (2) request additional information; or (3) request a briefing. If the Union has requested additional information or a briefing with its request to bargain, the Union will submit written bargaining proposals within five working days of the Agency's response to the request for information or the date of the briefing.
- C. If the Union fails to request to bargain within 10 working days from receipt of the Agency's notice or fails to submit written proposals within the required time frames, the Agency may implement the changes.
- D. The first negotiating session will take place as soon as possible but no later than five working days from receipt of the Union's written proposals.
- E. The time frames set forth in this section may be modified in writing by mutual agreement of the Parties.

Section 3. Union Initiated Bargaining

- A. When the Union notifies the Agency of its intention to initiate mid-term bargaining, it will provide notice to the Agency's Labor Relations Officer.

- B. Service may be by certified return receipt mail, email, or facsimile.
- C. The Parties will follow the timeframes outlined in Section 2 of this Article.

Section 4. Ground Rules for Mid-Term Bargaining

- A. In order to save resources and costs, the Parties agree to use available technology (e.g., video conferencing, teleconferencing) to negotiate as an alternative to face-to-face bargaining.
- B. The Agency will provide a meeting room for negotiations and reasonable equipment.
- C. The Agency and the Union will be represented at the negotiations at all times by one duly authorized Chief Negotiator who is authorized to execute agreements.
- D. During negotiations, the Chief Negotiator for each Party will signify agreement on each Memoranda of Understanding (MOU) by initialing each page of the agreed-upon MOU and executing the agreement where indicated on the MOU in accordance with Section 4 herein.
- E. The Union will be authorized the same number of Union representatives on official time as the Agency has representatives at the negotiations. The designated Union negotiators will be granted official time for time spent during the actual negotiations, including attendance at impasse proceedings during the time the employee would otherwise be in a duty status. The Union will be permitted to have negotiators who are not employees of the Agency. If the Union chooses to exercise this option, it agrees to pay any and all costs incurred by these negotiators.
- F. If any proposal is claimed to be non-negotiable and is subsequently determined to be negotiable, or the declaring Party withdraws its allegations of non-negotiability, the proposal will, upon request, be reopened within 30 days. Nothing in this provision will preclude the right of judicial appeal.

Section 5. Execution of Agreements

During the term of this Agreement, neither Party can add to, amend, or modify this Agreement absent mutual consent of the Parties.

Section 6. No Waivers

Nothing in this Agreement shall be deemed to waive either Party's statutory rights to assert the covered by doctrine and the Union's right to initiate mid-term bargaining on matters that are not contained in or covered by the Agreement.

Article 5: Research Programs and Demonstration Projects

Section 1. Definitions

For purposes of this Agreement, the terms “research program” and “demonstration project” have the following meaning, in accordance with 5 U.S.C. § 47:

- A. Research Program – a planned study of the manner in which public management policies and systems are operating, the effects of those policies and systems, and the possibilities for change, and comparisons among policies and systems.
- B. Demonstration Project – a project conducted by the Office of Personnel Management (OPM), or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management.

Section 2. Notification to the Union

- A. Prior to the inclusion of any employees in an Agency demonstration project, the Agency will provide notice and, upon request, bargain with the Union to the extent required by law and in accordance with the mid-term bargaining provisions of this Agreement.
- B. In the event a research program impacts working conditions of employees, the Agency will provide notice and, upon request, bargain with the Union to the extent required by law and in accordance with the mid-term bargaining provisions of this Agreement.

Section 3. Information Sharing

As early as possible in the deliberation or pre-decisional process, the Agency will brief the Union and provide applicable background materials concerning the proposed demonstration project that is under consideration. For any ongoing demonstration project, the Agency will provide periodic briefings along with applicable background materials to the Union, a copy of the project plan, as set forth in 5 U.S.C. § 4703(b)(1), and the OPM annual report, as set forth in 5 U.S.C. § 4705.

Article 6: Dues Withholding

Section 1. Payroll Deductions

Any bargaining unit employee(s) may have regular and periodic dues, fees, and assessments withheld through payroll deductions if the employee voluntarily completes an SF-1187, Request for Payroll Deduction for Labor Organization Dues, or its equivalent, and has sufficient compensation to cover the amount of the allotment.

Section 2. Union Responsibilities

- A. The Union will undertake to inform members of the voluntary nature of dues withholding and of the conditions governing a member's cancellation of dues withholding.
- B. The Union will forward any SF-1187 or its equivalent timely and any SF-1188 or its equivalent memorandum within five calendar days to the Agency personnel office when such forms or equivalent memoranda are submitted to the Union.
- C. The Union will inform the Agency personnel office of any participating employee on voluntary dues withdrawal who has been expelled or ceases to be a member in good standing of the Union as soon as possible.
- D. The Union agrees to inform the Agency personnel office of changes in the following:
 - 1. The title and address of the individual local Union official responsible for certifying, on each employee's authorization form, the Union code for dues to be withheld.
 - 2. The title and address and/or payee of the individual local Union official to whom remittances are to be made.
 - 3. Changes in dues amounts in either single or multi-level dues structures. Changes in the amount of allotments over which the Union has control may not be made more than once during a calendar year. Changes in the amount of allotments over which the Union does not have control may be made when required by an outside party.
 - 4. The name of any employee on dues withholding who transfers from one local to another within the bargaining unit, any change in the local to receive dues deducted, and any change in the amount to be deducted based on the transfer to a new local.
- E. The Union will purchase and distribute SF-1187's or their equivalent that includes the following language:
 - 1. Dues withholding may be revoked by submitting an SF-1188 or its equivalent within the 15-calendar day period prior to the anniversary date of signing the SF-1187 or its equivalent.
 - 2. If a request for revocation is not submitted within the time frame cited above, the authorization will recycle for additional one-year periods on each anniversary of the date the SF-1187 or its equivalent was signed.

Section 3. Agency Responsibilities

It is the responsibility of the Agency to:

- A. Ensure that bargaining unit employees who are transferred, reassigned, or otherwise relocated within the bargaining unit remain on dues withholding.
- B. Process voluntary allotments of dues in accordance with this Article. Dues changes and SF-1187s or equivalent forms will be processed on a timely basis.
- C. Withhold employee dues on a biweekly basis.
- D. Transmit electronic payment and remittance checks to the local allottee designated by the Union in accordance with this Article, together with the following information:
 1. The name of each unit employee for whom a deduction is made during that pay period and the amount withheld.
 2. Identification of unit employee(s) for whom allotments have been temporarily or permanently stopped and the reason(s) therefore.
- E. Upon request from an employee, furnish and process SF-1188s or equivalent forms in accordance with the terms and conditions specified on SF-1187s or equivalent forms and this Agreement. The Agency will return SF-1188s or equivalent forms not timely filed.
- F. The Agency will forward to the designated Union representative(s) copies of processed SF-1188s or equivalent forms received directly from members.

Section 4. Effective Dates

Effective dates for dues withholding actions will be as follows:

<u>Action</u>	<u>Effective Date</u>
A. Starting dues withholding	Beginning of the first pay period after computer acceptance of HHS-610(s) based on a properly executed form SF-1187(s).
B. Revocation of allotment	Revocation will be effective on the first pay period following the employee's anniversary date after computer acceptance of HHS-610(s) based on a properly executed form 1188 which must be submitted no earlier than 15 days prior to an employee's anniversary date. If management does not have the employee's original form 1187 to establish the anniversary date, the Union will provide a copy from their files. If the Union does not have a copy, the employee's anniversary date will be the first pay period that dues were actually withheld as shown by Central Payroll.

Any form 1188 received outside the 15-day time frame will be returned. Forms 1187 must clearly indicate to the employee that the authorization will recycle on each anniversary date unless timely revocation is received.

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| C. | Termination due to loss of membership in good standing | Beginning of the first pay period after computer acceptance of notification. |
| D. | Termination due to separation or movement outside unit of recognition | Beginning the first full pay period after computer acceptance of information. |
| E. | Changes in dues amounts | First full pay period after computer acceptance of the change unless a later date is specified by the Union. |
| F. | Transmittal of remittance checks to the Union | Normally, 10 working days from payday. |

Section 5. Disputed Eligibility

When the Agency believes a position subject to dues withholding is no longer eligible for such deduction, the Union will be notified in writing.

Article 7: Duration of Agreement

Section 1. Effective Date

After the Parties have signed the Agreement, it will be sent to the Department of Health & Human Services for Agency Head review. If the Agency Head does not approve or disapprove the Agreement within 30 days, it will be implemented and become effective pursuant to 5 U.S.C. § 7114(c).

Section 2. Duration of Agreement

This Agreement will remain in full force and effect for a period of three years after its effective date. At the expiration of three years from its effective date, the Agreement will automatically renew for one-year periods unless the Agency or the Union requests to renegotiate the Agreement.

Section 3. Renegotiation

- A. The Agency or the Union may request to renegotiate the Agreement by submitting a notice in writing to the other Party at least 60 days, but not more than 180 days, prior to the expiration date. Once the Agency or the Union submits a request to renegotiate under this Article, the entire Agreement is subject to renegotiation.
- B. When notice of intent to renegotiate is given, the Parties will meet to negotiate ground rules within 30 days of the notice to renegotiate. The provisions of Article 4 do not apply to negotiations under this Article.
- C. The ground rules that are negotiated shall be reduced to writing and shall include, at a minimum, procedures governing submission of written proposals, scheduling, and caucuses.
- D. If the Agency or the Union timely requests to renegotiate the Agreement, the Agreement will be automatically extended until negotiations are completed, but in no event for a period greater than 60 days after the expiration date. This Agreement may be further extended by the mutual written consent of the Parties.

Article 8: Official Travel

Section 1. General Principles

- A. The Parties recognize that employees may be required to perform travel away from their official duty station. When travel is required, employees will be compensated for their time and expenses in accordance with applicable law, Government-wide rule or regulation, including 5 C.F.R. Parts 550-551 and 41 C.F.R. Parts 300-301 (Federal Travel Regulation (FTR)) and this Article.
- B. The Parties recognize that not all time spent traveling is compensable. In those instances where time spent traveling is not compensable, an employee may be eligible to receive compensatory time off for travel, in accordance with 5 C.F.R. Part 550, Subpart N. Instructions for requesting compensatory time off for travel can be found on the Agency's intranet.
- C. An employee must exercise the same care in incurring travel expenses that a prudent person would exercise if traveling on personal business.
- D. All employee travel that takes place during an employee's regular working hours is paid for and compensated as hours of work. An employee's regular working hours are defined as those hours an employee is scheduled in advance to work within the Agency's established tour of duty as set forth in Article 10.
- E. To the maximum extent practicable, employees should be scheduled to perform official travel during their regular working hours so as to minimize the effects of such travel on employees, their personal lives, and that of their families.
- F. In accordance with 5 C.F.R. Part 610.123, insofar as is practicable, when it is essential that an employee travel outside of the Agency's established tour of duty as set forth in Article 10, and the employee may not be paid overtime in accordance with 5 C.F.R. Part 550.112(e), the Agency shall record the reasons for ordering travel at those hours and shall, upon request, furnish a copy of the statement to the employee concerned.
- G. To the maximum extent practicable, travel should be scheduled on the day preceding or following an event if circumstances would require the employee to travel earlier or later than the Agency's established tour of duty as set forth in Article 10.
- H. On days of travel, an employee's regular working hours may be set anytime within the Agency's established tour of duty as set forth in Article 10, with management approval.
- I. Travel is either to a location within the employee's official duty station (i.e., local travel) or to a temporary duty (TDY) location outside the official duty station (i.e., TDY travel).
- J. A temporary duty (TDY) location is a place away from an employee's official duty station where the employee is authorized to travel. An employee's travel is away from (i.e., outside the limits of) the employee's official duty station if it is more than 50 miles, by the most direct route possible, from his or her official duty station and residence.
- K. When employees travel directly from home to a temporary duty (TDY) location, the time the employee would have spent in normal home to work travel shall be deducted from hours of work.

- L. A travel order is required for all TDY travel. A travel order is necessary even if the employee will be a passenger and does not plan to claim any expenses. A travel order is not required for local travel, except as required in Section 4.D. of this Article. Generally, and to the extent possible, travel orders will be approved at least three working days prior to the employee's date of departure.
- M. When requested by an employee, the employee's manager will provide written authorization (e.g., email) for local travel.
- N. All official travel (i.e., local, long distance, international, and travel reimbursed by a non-Federal source) must be approved by the Agency prior to the employee's departure. This includes travel associated with attendance at conferences, trainings, meetings, site visits, and other official travel to domestic and international destinations. When applicable, the employee will follow all procedures for any additional approvals required by the Agency.
- O. Employees may not incur any additional cost to the Agency when combining personal leave with official travel.

Section 2. Compensation for Travel Outside Regular Working Hours

- A. Compensation for travel outside of an employee's regular working hours will be determined by the employee's designated status under the Fair Labor Standards Act (FLSA).
- B. Employees are designated as either: (1) covered by the provisions of the FLSA (FLSA non-exempt); or (2) not covered by the provisions of the FLSA (FLSA exempt).
- C. These FLSA designations, which are determined by the Agency based upon the duties actually performed by the employee, should appear in applicable employee official personnel records.
- D. In accordance with 5 C.F.R. Part 551, for FLSA non-exempt employees, time spent traveling outside of the employee's regular working hours shall be considered hours of work (i.e., payable as overtime or compensatory time at the employee's election) if the employee:
 1. Is required to drive a vehicle or perform other work while traveling;
 2. Is required to travel as a passenger on a one-day assignment away from the official duty station;
 3. Is required to travel as a passenger on an overnight assignment away from the official duty station during hours on non-work days that correspond to the employee's regular working hours; or
 4. Meets any of the requirements in 5 C.F.R. Part 550, (set forth below), for FLSA-exempt employees.
- E. In accordance with 5 C.F.R. Part 550, for FLSA exempt employees, time spent traveling outside of the employee's regular working hours shall be considered hours of work (i.e., payable as overtime or compensatory time) if the travel:
 1. Involves the performance of actual work while traveling;

2. Is incident to travel that involves the performance of work while traveling;
 3. Is carried out under such arduous and unusual conditions that the travel is inseparable from work; or
 4. Results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of the employee to his/her official duty station.
- F. If a FLSA exempt or non-exempt employee is traveling outside of regular working hours and his/her travel is not considered hours of work, and thus not eligible for compensation of cash overtime or compensatory time in lieu of cash overtime, the employee will be credited with earning compensatory time off for travel for the time of the travel in accordance with 5 C.F.R. Part 550, Subpart N.

Section 3. Compensatory Time Off for Travel (CTT)

- A. Compensatory time off for travel (CTT) is a form of compensatory time off that may be earned by an employee for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable.

For the purpose of compensatory time off for travel, time in a travel status includes:

1. Time spent traveling between the official duty station and a temporary duty station (TDY);
2. Time spent traveling between two temporary duty stations; and
3. The "usual waiting time" preceding or interrupting such travel (e.g., waiting at an airport or train station prior to departure) is at the sole and exclusive discretion of the Agency. Currently, employees may claim up to two hours of CTT waiting time in the airport for domestic flights, up to three hours for international flights, and for other forms of transportation, such as trains or buses, up to 30 minutes of wait time in a transportation terminal may be claimed. Supervisors have the discretion to adjust these times in unusual circumstances (e.g., an employee's flight is cancelled and he/she must wait in a line designated by the airline to make alternate arrangements) and employees may be authorized additional CTT for the extended wait time.

B. Requesting CTT

1. A CTT request form must be submitted to the employee's immediate manager for processing prior to the start of the approved travel.
2. The approved or denied CTT request form will be returned to the employee prior to the scheduled travel.
3. CTT should be approved retroactively where it is impractical for the employee to obtain advance approval.

C. Commuting Time

1. Travel outside of regular working hours between an employee's home and a TDY or transportation terminal outside the limits of his or her official duty station (i.e.,

outside of 50 miles) is considered creditable travel time. However, an employee's normal home-to-work/work-to-home commuting time is deducted from the creditable travel time.

2. Travel outside of regular working hours between a worksite and a transportation terminal is creditable travel time, and no commuting time offset applies.
3. Travel outside of regular working hours to or from a transportation terminal within the limits of an employee's official duty station (i.e., 50 miles) is considered equivalent to commuting time and is not creditable travel time.

D. Crediting and Use

Compensatory time off for travel is credited and used in increments of one-quarter of an hour (15 minutes). Employees must request CTT on form CMS-20029.

E. Forfeiture

Compensatory time off for travel is forfeited:

1. If not used by the end of the 26th pay period during which it was earned;
2. Upon voluntary transfer to another agency;
3. Upon movement to a non-covered position; or
4. Upon separation from the Federal Government.

F. Limitations

Compensatory time off for travel may not be considered in applying the biweekly or annual premium pay caps or the aggregate limitation on pay. There is no limitation on the amount of CTT an employee may earn.

Additional information about CTT may be found on the Agency's intranet.

Section 4. Use of Government Contractor-Issued Travel Charge Card

- A. Employees who are required to perform temporary duty travel (TDY) away from their official duty station five or more times per year will be issued and must use the Government contractor-issued individually billed travel charge card for all official travel expenses, including airfare/rail, lodging, rental car, Travel Management Center (TMC) fees, and cash advances through an ATM machine, unless they have an approved exemption. Use of such card and payment associated with the use of such card will be in accordance with applicable law, Government-wide rule or regulation, and the requirements set forth in the agreement between the employee and the charge card issuer (i.e., contractor) selected by the Agency.
- B. Generally, the Agency will not require new or infrequent travelers, (except those included in Section 4.H. of this Article) to travel overnight prior to receiving a travel advance or Government contractor-issued travel charge card.
- C. The Government contractor-issued travel charge card may only be used for official travel expenses while on TDY travel, including charges incidental to travel that may not be reimbursable under applicable law, Government-wide rule, or regulation. Employees may

not use the Government contractor-issued travel charge card to make personal purchases, obtain cash automated teller machine (ATM) withdrawals unrelated to official TDY travel, or for any other purpose unrelated to official travel.

- D. ATM withdrawals are limited to expenses that cannot be paid using the travel charge card and are limited to no more than 60% of an employee's meals and incidental expenses. ATM withdrawals should be made no more than two days prior to travel to cover cash expenses during official TDY travel. In addition, the card cannot be used for reimbursement of local travel expenses (e.g., parking, taxi, gas for privately owned vehicle, etc.), except when authorized (by an approved travel order) for a rental car for a site visit and the purchase of gasoline for the rental car's official use.
- E. All expenses on the card must be paid in full at the time of receipt of the bill. In accordance with OMB Circular A-123, Appendix B, the Agency is implementing split disbursement in which payment of travel expenses is divided between the travel charge card contractor and the employee. All expenses categorized in the automated travel system where the method of payment selected is "individually billed account (IBA)" will be paid directly to the contractor.
- F. The Agency may direct the travel charge card contractor to revoke an employee's Government contractor-issued travel charge card for inappropriate use, failure to take mandatory travel charge card training within 30 days of notification, or payment delinquency. Employees must complete the mandatory travel charge card training prior to receiving their travel charge card and thereafter as required by the Agency.
- G. An employee who travels four times or less during the year (i.e., infrequent traveler) will be exempt from the requirement to use the Government contractor-issued travel charge card. At the employee's election, an Agency-issued cash advance for an infrequent traveler will be up to 80% of the total estimated meals, incidental expenses, lodging, and other expenses authorized on the travel order. However, if the employee's supervisor determines that the 80% limitation will result in a justifiable and significant financial hardship on the employee, the supervisor, with the concurrence of the appropriate authorizing Agency official, may at their discretion, authorize an advance up to 100% of the estimated reimbursable expenses for an individual trip.
- H. Employees may request, in writing, to be exempted from the mandatory requirement to use the Government contractor-issued travel charge card for travel. In such cases, the delegated authorizing Agency official will give genuine consideration to such request and provide its decision to the employee in writing.
- I. All exemptions may be reviewed periodically. If appropriate, the employee may be required to reapply for the Government contractor-issued travel charge card.
- J. Employees who refuse to apply for the travel charge card for official TDY travel, or have had their travel charge card canceled for misuse, abuse, or delinquency, will not be authorized an Agency-issued travel advance unless they otherwise are covered by an exemption or they have applied for and been approved for a waiver. The waiver request must be made to the employee's immediate manager or designee, who will process the request in accordance with CMS' Delegations of Authority, in order to receive a cash advance. The Agency will give genuine consideration to all requests for a waiver. If the

waiver is approved, a cash advance will be issued of at least 80% of the total estimated meals, incidental expenses, lodging, and other expenses authorized on the travel order. However, if the employee's supervisor determines that the 80% limitation will result in a justifiable and significant financial hardship on the employee, the supervisor, with the concurrence of the appropriate authorizing Agency official may, at their discretion, authorize an advance up to 100% of the estimated reimbursable expenses for an individual trip.

K. Employees who have had their Government contractor-issued travel charge card suspended or canceled may apply for reinstatement after one year. Employees can request information on this process by sending an email directly to TravelChargeCard@cms.hhs.gov. The Agency will issue a written decision within 30 working days after receipt of the request for reinstatement.

L. In accordance with OMB Circular A-123, Appendix B, the Agency is required to maintain internal controls that reduce the risk of fraud, waste, and error in Government charge card programs. This requires the travel charge card contractor to perform credit checks on all new travel card applicants. Neither the travel charge card issuer, nor CMS, will see any of the individual's credit file data.

New travel card applicants will be required to either authorize the travel charge card issuer to do a credit score check or refuse to authorize for such a check. This authorization or refusal to authorize must be done prior to issuance of a travel charge card. Any individual with a credit score below 660 or who refuses to permit a credit score check will be issued a restricted travel charge card. A restricted travel charge card will have a lower credit limit and will not have any ATM withdrawal capability (no cash advances). A restricted travel charge card will have a credit limit of at least \$5,000.

An evaluation of credit-worthiness may be submitted to the travel charge card issuer based upon the employee's request provided that it has been at least six months since his/her last request to the travel charge card issuer and the employee can demonstrate a timely payment history to the travel charge card issuer.

M. Employees whose Government contractor-issued travel charge cards are canceled or suspended are encouraged to utilize the services of the Employee Assistance Program (EAP).

N. The Government contractor-issued travel charge card may only be used for official TDY travel related expenses for the employee to whom it was issued. Prohibited card uses include:

1. Unauthorized charges not associated with official TDY travel, such as personal and family member use of the card or ATM withdrawals for personal use.
2. Charges not related to official TDY travel, including:
 - a. Use of the card in the vicinity of the official duty station or residence, unless used in connection with official TDY travel when on an approved travel authorization;
 - b. Use of the card for reimbursement of local travel expenses; and

- c. Use of the card for cash withdrawals from an automated teller machine, unless used in connection with official TDY travel.
- 3. Shared use of the travel charge card with another employee for official TDY travel purposes.
- 4. Allowing the account to become delinquent (an account is delinquent after the due date on the statement).
- 5. Failure to use the travel card while on official TDY travel, unless exempted.
- 6. Failure to pay the account with sufficient funds (inadequate funds in the bank account to cover payment).
- 7. Excessive cash advances, or cash advances not commensurate with official TDY travel (i.e., more than 60% of an employee's meals and incidental expenses).

Section 5. Reimbursement for Travel Expenses to TDY Locations

- A. In accordance with Public Law 104-134, the Agency will reimburse employees for travel expenses through electronic funds transfer.
 - 1. Employees must submit a travel claim (i.e., voucher) within five working days after completion of the travel or every 30 days if the employee is on continuous travel status.
 - 2. The employee's manager or designee should make every effort to review and approve or deny the travel voucher within five working days of receipt.
 - 3. Employees should expect to receive travel expense reimbursement within five working days of the Agency's receipt of a proper travel claim.
- B. Generally, employees must have a written or electronic authorization prior to incurring any travel expense. If it is not possible to obtain such authorization prior to travel, employees must obtain a verbal approval from management.
- C. Employees are expected to travel from their official duty station to the TDY location and return by the usually traveled route. On a case-by-case basis, with prior approval from the employee's manager, employees may be authorized to travel from an airport or train station that is closer to their address of record if there are no additional costs for doing so. Employees are responsible for preparing travel cost comparisons. The Agency's travel office or designee will approve or deny the request based on a review of the cost comparison. If the cost changes between approval and ticketing and the increase surpasses what the Agency would pay for travel from the official duty station, the employee is responsible for the difference or must travel from the official duty station.
- D. Employees are eligible for per diem allowance when they perform official travel away from their official duty station, incur per diem expenses while performing official travel, and are in travel status for more than 12 hours in a calendar day. The actual location of the official business determines the applicable per diem rate for TDY travel. Employees must adjust their meal allowance (i.e., M&IE) for any meals that they consume on official travel (e.g., lunch included with conference registration).

- E. Normally, requests for Actual Expense Allowance (AEA) for lodging must be approved prior to incurring a lodging rate greater than the maximum per diem rate allowance. A request for AEA must include documentation showing a cost comparison from a minimum of three hotels within the TDY location. In addition, the request must include the following information: the distance from the hotel and the meeting place, any anticipated cab fare requested, and the justification for not selecting the lowest cost hotel. This documentation must be included with the travel authorization prior to seeking AEA approval.
- F. Reimbursement for actual expenses allowable under applicable law and Government-wide rule or regulation may be authorized on a post-approval basis only when the Agency determines the explanation for non-submission provided by the employee is acceptable.
- G. In accordance with applicable law and Government-wide rule or regulation, the Agency will authorize the payment to an individual to accompany or assist (or both) disabled employees or employees with special needs for all or a portion of the travel period involved. Payment of other additional travel expenses to the disabled employee/ employee with special needs or the individual who accompanies or assists, may also be authorized in accordance with applicable law and Government-wide rule or regulation. Employees must apply for and be approved for a reasonable accommodation by the Office of Equal Opportunity and Civil Rights in order to receive this benefit.
- H. Normally, internet fees should be anticipated in advance, and therefore, requested, justified, and pre-approved on the travel authorization. Most hotels offer free internet service and the Agency may have wireless access (e.g., MiFi mobile hotspot devices) available for use. However, an employee may be approved for reimbursement of internet fees while on TDY when the hotel does not offer it for free. Retroactive approval may be granted at the discretion of the approving official, when properly justified.
- I. Commercial charges for telephone calls placed for personal reasons while in travel status are reimbursable as a miscellaneous travel expense, subject to the following restrictions:
 - 1. Employees must incur a minimum of one night's lodging on official travel.
 - 2. Reimbursement will be limited to actual expenses incurred not to exceed an amount equal to \$5.00 times the number of consecutive nights on official travel. An employee must make reasonably prudent efforts to obtain and submit receipts for costs claimed on his/her travel voucher in order to receive this reimbursement.
 - 3. No reimbursement will be permitted for the use of employee owned communication devices, such as smart phones, tablets, etc., for domestic or non-foreign travel.
- J. Laundry, cleaning, and pressing of clothing at a temporary duty location is reimbursable as a miscellaneous travel expense, subject to the following restrictions:
 - 1. Employees must incur a minimum of four consecutive nights' lodging on official travel.
 - 2. Reimbursement will be limited to actual expenses incurred not to exceed an amount equal to \$5.00 times the number of consecutive nights on the trip for the first 30 days at a temporary duty travel location.

- K. Employees on extended TDY travel (i.e., more than 30 days) may be authorized per diem or actual expense and round trip transportation for periodic return travel on non-work days to his/her home or official duty station, in accordance with applicable law and Government-wide rule or regulation. Employees who elect to voluntarily return home during non-work days or non-work hours will be limited to the maximum reimbursement for round trip transportation or per diem or actual expense that would have been allowed had the employee remained at the TDY location, in accordance with applicable law and Government-wide rule or regulation.
- L. The per diem rate for employees on extended TDY travel (i.e., more than 30 days) will be reduced in accordance with the Federal Travel Regulation.
- M. If there is a personal or family emergency requiring the employee to return home, the employee should notify his/her manager as soon as possible and will be reimbursed for expenses incurred in return travel to the employee's official duty station in accordance with applicable law and Government-wide rule or regulation.
- N. When an employee in travel status becomes incapacitated by illness or injury, not due to the employee's own misconduct, which interrupts or discontinues his/her TDY travel assignment, the employee should notify his/her manager as soon as possible and will be reimbursed for expenses incurred in return travel to the employee's official duty station in accordance with applicable law and Government-wide rule or regulation.
- O. If an employee's origin or destination is outside the continental United States (OCONUS), he/she may be authorized a rest period of 24 hours or less at either an intermediate point or at the destination in accordance with applicable law and Government-wide rule or regulation. The following conditions must be met in order for a rest period to be authorized: the scheduled flight time, including stopovers, exceeds 14 hours; travel is by direct or usually traveled route; and travel is by less than premium class service. When a rest stop is authorized, the applicable per diem rate is the rate for the rest stop location.
- P. As soon as practical, the Agency agrees to notify employees as to why any claims for travel expenses are disallowed. Notices of disallowance will be in writing and will provide a detailed explanation for the disallowance. The disallowance will include the name of the designated Agency reconsideration official. An employee may request reconsideration if the employee has additional facts or documentation to support his/her request for reconsideration. The decision for reconsideration will normally be issued within 15 working days from receipt of the request. If, after reconsideration, the claim is still denied, the employee may submit the claim for adjudication to the U.S. General Services Administration (GSA) Board of Contract Appeals in accordance with 48 C.F.R. Part 6104.
- Q. Employees may be reimbursed for the following baggage fees:
1. Transportation charges for authorized excess (e.g., weight, size, and number of bags). When practical, employees should identify more advantageous methods of shipping conference/training materials.
 2. Necessary charges for transferring baggage.

3. Necessary charges for storage of baggage when such charges are the result of official business.
4. All fees pertaining to the first checked bag. In addition, charges relating to the second and subsequent bags may be reimbursed based on the justification provided by the employee.
5. Charges or tips at transportation terminals for handling Government property carried by the traveler.

Items 1, 2, 3, and 4 require pre-approval on the travel authorization. When prior authorization is not practical, transportation charges may be approved on an amended travel order based on the justification provided by the employee. Failure to receive prior approval may result in an employee not being reimbursed for the expense.

- R. Receipts for lodging, rental car, air/rail fare, and any expense costing \$75 or more are always required. Employees will make reasonably prudent efforts to obtain and submit receipts for all other costs claimed on his/her travel voucher. For any claimed travel expense, employees may need to provide justification to the travel office.

Section 6. Retention and Use of Promotional Items and Frequent Flyer Miles

In accordance with Public Law 107-107 (the National Defense Authorization Act for Fiscal 2002, S. 1438), employees may retain and use promotional items, including frequent flyer miles, earned on official Government travel.

Section 7. Method of Transportation

- A. Employees are expected to travel using the method of transportation that is most advantageous to the Government, as determined by the Agency. When an employee does not travel by the method required by the Agency, any additional expenses will be borne by the employee.
- B. Travel by common carrier is presumed to be the most advantageous method of transportation. Employees must use GSA contract City Pair Fares, unless a specific exception applies, in accordance with 41 C.F.R. Part 301-10.107 of the FTR.
- C. When the Agency determines that an employee's travel must be by automobile, a Government automobile is presumed to be the most advantageous method of transportation. When the Agency determines it is advantageous to the Government, employees may be authorized to use a rental automobile. Employees are not authorized to purchase pre-paid fuel for the rental car.
- D. Employees may request and be authorized to use privately owned vehicles (POVs) for official travel. When the Agency determines that it is advantageous to the Government for the employee to use his/her POV, the employee will be compensated at the applicable mileage rate established by the GSA. When the Agency determines that it is advantageous to the Government to use another method of transportation other than the employee's POV, and the employee elects to use a POV, reimbursement will be limited in accordance with applicable law and Government-wide rule or regulation and leave must be charged for any duty hours missed as a result of travel by POV.

- E. When two or more employees with different regular working hours are traveling together by POV, Government automobile, or a rental automobile, the employees may reach agreement as to the regular working hours for the day of travel. Absent such agreement, the Agency will determine the regular working hours for the day.
- F. Employees are expected to use prudence and good judgment when choosing the mode of transportation between sites when on TDY travel (e.g., between residence and carrier terminal, place of lodging and temporary work site, carrier terminal and place of lodging, etc.).
- G. When using a POV to/from the common carrier terminal (e.g., airport, train station, etc.), an employee may request and be reimbursed for mileage and parking fees at a common carrier terminal. The cost should not exceed the cost of a taxi fare or shuttle to/from the terminal. A cost comparison may be required to assist in determining the most advantageous mode of transportation. Employees are required to incur all expenses prudently and to park in the lowest costing affiliated parking facility/lot.
- H. Employees may be authorized or approved to use taxicabs, shuttle services, Transportation Network Companies (TNCs) (e.g., Uber, Lyft), or courtesy transportation for local and TDY travel in accordance with applicable law and Government-wide rule or regulation, whichever is expected to be most advantageous to the Government. Reimbursement includes the usual fare. Tips to a taxi, shuttle service, TNC, or courtesy transportation driver are limited to 15% of the charge for the service. If there is no service charge, the limit for tips is \$5. (This expense should be recorded as a transportation expense on the voucher. It is not included in the “incidentals” portion of the per diem.)
- I. Employees are responsible for updating their online TNC profiles as necessary to ensure proper use of the government issued travel charge card.
- J. When traveling to or from areas with multiple airports, employees must provide a cost comparison for flights to and from each airport. The airport selected should be the one determined to be the most advantageous to the Government.
- K. The Agency will not reimburse expenses related to seating upgrades in coach class for personal preference, nor any other ancillary fees. In the event that an employee is flying on a City Pair Fair and the only seat available requires the purchase of a seating upgrade in coach class, the expense may be reimbursed. An employee must obtain and submit receipts and documentation for costs claimed in association with a required seating upgrade.
- L. Employees whose pre-approved travel arrangements (e.g., air, hotel, government or privately owned vehicle) unexpectedly change or become unavailable will contact the Travel Management Center (TMC) to make alternate arrangements (e.g., renting a car, changing flights), if necessary.

Section 8. Exceptions for Authorization of a Per Diem Allowance in the “Local Travel Area” (80 Mile Rule)

As a rule, a per diem allowance will not be paid in the local travel area unless the following narrow exception applies, in which **ALL** criteria must be met:

- A. The local travel is not being performed to attend or participate in a conference, meeting, or training for which the Agency had any influence over or input into the site selection; and
- B. The local travel assignment will last at least three consecutive nights and four days, and entails at least nine and one-half (9 ½) consecutive hours of work per day on each of those days; and
- C. It is clearly within the Government's interest, for accomplishment of its mission, to permit a particular employee to stay overnight at the site of the local travel assignment on one or more of those night(s), not necessarily consecutive; and
- D. That employee would be required to perform an extensive amount of driving (defined as at least 80 miles) each way between his/her residence and the site of the local travel assignment, on a daily basis (in a carpool situation, each employee must live at least 80 miles from the TDY site to qualify for this exception); and
- E. Significant safety issues are raised by the combination of the extended hours of work and the extensive amount of driving for the employee performing this local travel assignment.

Section 9. Advanced Authorization of Allowances

When a charge is reasonably foreseeable, employees must obtain pre-approval for the following:

- A. Rental of any vehicle, including any vehicle other than the default rental car size defined as compact or economy;
- B. Rental of a vehicle containing a Global Positioning System (GPS);
- C. Use of Acela train travel (Premium Class accommodations); and
- D. Internet fees.

Every effort should be made to obtain authorization in advance of travel for the items contained in this section. When prior authorization is not possible or practicable, post-trip approval may be issued with the exception of the use of Acela train travel. Acela train service is considered premium class travel and failure to obtain proper authorization prior to purchase will result in not being reimbursed for the higher fare.

Section 10. Use of Electronic Travel System

- A. Employees must use the Agency's designated Electronic Travel System (ETS) or the Travel Management Center (TMC) to make all reservations for common carrier transportation, lodging, and rental car services.
- B. Section 10.A. herein is subject to the following exceptions:
 - 1. If there is an emergency where it is not possible to use the Agency's ETS or the TMC for arranging for common carrier transportation, lodging, and/or car rental, an employee should provide an appropriate justification and documentation to their immediate manager or designee, who will process it in accordance with CMS Delegations of Authority.

2. When travel is to a remote location and it is not possible to book lodging accommodations through the Agency's ETS, employees should work directly with the TMC to determine lodging availability.
 3. When travel arrangements are so complex and circumstances will not allow for booking travel through the Agency's ETS in this instance, employees should contact the TMC directly for assistance.
- C. Genuine consideration must be given to lodging establishments that are contracted with GSA under the Fed Rooms program. If there are no Fed Rooms properties at the TDY location, the employee may select a hotel listed under the "Other Lodging" tab located in the Agency's ETS.

Section 11. Document and Property Loss/Theft

While in travel status, an employee is accountable for government documents and/or property in the employee's possession and/or custody and should exercise reasonable measures (e.g., property not left visibly exposed or unattended in a public place) to properly store and safeguard these items.

Article 9: Health and Safety

Section 1. General

- A. The Agency will provide a comprehensive and operational health and safety program that addresses: physical structure, technology, environment, service to employees, training, safety, and emergencies. The Agency will provide for full disclosure of inspections, abatement plans, and/or corrective actions.
- B. The Agency will provide a safe and healthy work environment in accordance with E.O. 12196 and the Department of Labor implementing regulations (such as, but not limited to, 29 C.F.R., Parts 1910, 1926, and 1960).
- C. The Agency will furnish each employee a place of employment that is free from recognized hazards that cause, or are likely to cause, death or physical harm.
- D. The Agency will assure that no employee is subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of an unsafe or unhealthy working condition or for otherwise participating in Agency occupational safety and health program activities.
- E. The Agency will identify health and safety officials with authority to act on behalf of the Agency. The Agency will conspicuously post on the CMS intranet the positions and telephone numbers of officials.
- F. The Agency will make available, within five working days of the Agency's receipt, any health and safety inspection report to the appropriate Health and Safety Committee and the Union's Principal Designee.
- G. The Agency is responsible for maintaining the cleanliness of the work complex. Employees have a similar responsibility.
- H. The Agency will label all Agency telephones with appropriate emergency numbers.

Section 2. Health and Safety Committees (HSC)

- A. The Parties agree that Union/Management participation in the Agency's Occupational Safety and Health Program, at all levels, is essential for the overall success of the program. There will be a joint Health and Safety Committee (HSC) in Central Office and in each Regional Office. In the Regional Offices, the Parties are encouraged to participate in established multi-agency HSCs at the facility.
- B. The purpose of the HSCs are to monitor, advise, and assist in the development and operation of the Agency's occupational safety and health program.
- C. Each HSC will consist of an equal number of Union and Management representatives, not to exceed four members in total. Each HSC will designate one member to coordinate and schedule HSC meetings. Such designations will rotate among all HSC members.
- D. The functions of the HSC include, but are not limited to:
 - 1. Receiving employee reports of unsafe and unhealthy conditions;

2. Referring matters to the Agency's designated health and safety officials, as appropriate;
 3. Receiving copies of any written notice referred by an Agency official in response to an employee report of an unsafe or unhealthy condition;
 4. Receiving information related to job safety analysis if there appears to be a pattern of accidents, disabling injuries, and/or illnesses, and making recommendations to eliminate any hazards identified;
 5. Encouraging employees to submit suggestions or recommendations for improving the health and safety program; and
 6. Reviewing all health and safety material produced by the Agency for distribution to employees participating in any employee meetings held by the Agency on occupational health and safety programs.
- E. The Agency will pay registration and related expenses (generally not to exceed \$500) for each HSC member to attend at least one local health and safety related conference each year.
- F. The Agency will post the names and telephone numbers of the HSC members on the Agency's intranet.
- G. Each HSC will meet at least twice a year to discuss health and safety issues that impact its location. By mutual agreement of the HSC, each HSC may meet more regularly (e.g., quarterly) or cancel any meeting determined to be unnecessary. In addition, at least once a year there will be an Agency-wide HSC meeting to discuss health and safety issues.

Section 3. Reporting Unsafe Conditions

- A. Employees may report unsafe or unhealthy conditions to any of the following locations or individuals:
- Employees in Central Office should report unsafe or unhealthy conditions to the Health and Safety Officer (HSO), a Central Office HSC member, or any Central Office Union representative. Employees in a Regional Office should report unsafe or unhealthy conditions to a Regional HSO, the Administrative Officer, a Regional Office HSC member, or any Regional Office Union representative.
- If requested, the employee's anonymity will be protected whenever appropriate.
- B. When the Agency receives a report or identifies that a dangerous, unhealthy, or potentially dangerous condition is present at a particular worksite, the Agency will notify the appropriate HSC as soon as practicable (i.e., when it is safe to do so). For all other conditions, the Agency will notify the HSC within 20 working days and give the HSC an opportunity to accompany an inspection team.
- C. If an employee reasonably believes that a serious, unsafe, or unhealthy hazard exists that requires an immediate solution, the employee may leave his or her work area, notify an Agency management official, and hold himself or herself available for work.

Section 4. Abatement of Unsafe or Unhealthful Conditions

- A. The Agency will take the necessary steps to promptly abate unsafe or unhealthy working conditions.
- B. An abatement plan will be prepared if the abatement of an unsafe or unhealthy working condition will not be possible within 30 days. Such plan will contain an explanation of the circumstances of the delay in abatement, a proposed timetable for the abatement, and a summary of steps being taken in the interim to protect employees from being injured as a result of the unsafe or unhealthy working conditions. Affected employees will be informed of the provisions of the abatement plan.

Section 5. Inspections

- A. The Agency will conduct annual unannounced safety inspections at each Agency-occupied facility and follow-up inspections in areas where corrective action is required. Additional inspections will be conducted as determined necessary by the Agency.
- B. The Agency will prepare or otherwise provide for a report of the inspection and notify specific component management for corrective action. The Agency will ensure that a copy of the report is made available to the appropriate HSC and the Union's Principal Designee as provided in Section 1.F. of this Article.
- C. HSC members will be notified of all inspections and afforded the opportunity to accompany the inspection team.

Section 6. Safe and Healthy Working Environment

The Agency is committed to providing employees a safe and healthy working environment that includes, but is not limited to, the following issues:

- A. To the extent that the Agency has control, there will be no application of insecticides and other like chemicals during working hours in occupied areas. Such other chemicals include paint, carpet glue, HVAC cleaning agents and/or similar construction chemicals. Whenever insecticides and other like chemicals are used, the HSC, as well as affected employees, will receive advance notice about the application. Requests from employees with special health needs will be considered. The area will be adequately ventilated prior to occupancy. In leased buildings, the Agency will work with the lessor and/or GSA in order to achieve and maintain these standards.
- B. The Agency will post appropriate emergency numbers.
- C. The Agency's goal is to be sensitive to employees with perfume and chemical sensitivities who, as a result, may suffer potentially serious health consequences. In order to address this concern, employees should refrain from wearing scented products, including, but not limited to, perfumes, colognes, after-shave lotions, or similar products. Further, scented personal care products must not be applied at or near workstations, restrooms, or anywhere in Agency owned or leased buildings. Employees are not permitted to use scented candles, spray or solid air fresheners, room deodorizers, plug-in wall air fresheners, or similar products in Agency owned or leased buildings. Exceptions

to these prohibitions may be in the areas of fitness centers, day care centers, or other such services.

- D. The Agency will have an Occupant Emergency Organization Plan and will publish the chain of command, which will identify a representative who will be available for contact for employee direction. The plan will cover employee procedures in the event of fire, bomb threat, or similar emergency situations. Evacuation drills will be conducted at least annually.
- E. The Agency will make every reasonable effort to provide employees, as appropriate, with ergonomic workstations that meet the requirements of the American National Standards Institute (ANSI). The Agency will provide employees with workstations appropriate to their function. The Agency will provide a quality workplace that supports program operations, meets the needs of the occupant, and is consistent with mission requirements.
- F. The Agency and Union agree that all CMS employees are entitled to work in an environment containing safe and healthy indoor air quality. The Agency agrees to continue its current program of air quality testing. A copy of the air quality report will be provided to the HSC. The Agency will conduct on-site investigations/inspections when a problem concerning indoor air quality or microbial contamination is formally brought to the attention of the Agency. The Agency agrees to eliminate or control all known and potential sources of microbial contaminants and appropriately respond to all areas where water collection and leakage has occurred. The Agency will promptly clean and/or repair contaminated areas.
- G. Smoking (including electronic cigarettes, cigars, and pipes) will not be permitted anywhere on the Agency single site campus at 7500 Security Boulevard. Smoking will not be permitted anywhere in Regional Offices or Washington D.C. and ALL other Baltimore and Bethesda Office locations unless permitted by GSA guidelines or local lessor requirements.

Section 7. Medical Services and Health Programs

The Agency will provide medical services and health programs to all employees.

- A. The Agency will provide the following services:
 1. A health unit staffed by appropriate certified medical personnel that provides, at a minimum, emergency treatment, blood pressure screening, and treatments requested by an employee's private physician.
 2. If the Agency has reason to believe that an employee was exposed in the conduct of their official duties to an infectious disease and/or toxic substance that poses a serious health threat, the Agency will suggest timely medical testing at the expense of the Agency.
 3. The Agency will offer smoking cessation assistance to employees at no cost to the employees. Such assistance may include smoking cessation classes where there are a sufficient number of employees enrolled. Where an insufficient number of employees enroll for a class, the Agency may cancel the class at its option.

Employees participating in these classes will be granted administrative leave equal to the time allotted for each session.

- B. The Agency will make reasonable efforts to ensure the availability of Automated External Defibrillators (AEDs) and adequately trained personnel to administer Cardio-Pulmonary Resuscitation (CPR).
 - 1. The Agency will periodically solicit for volunteers;
 - 2. The Agency will timely provide training and recertification at no cost to the volunteers;
 - 3. The Agency will provide AED/CPR placards to certified individuals for placement outside their workstations; and
 - 4. Each AED will contain a CPR mask.
- C. The Agency will seek to protect the anonymity of employees seeking or receiving services under these health and medical programs.

Section 8. Renovations and Construction

- A. During pre-planning stages, the Agency will ensure the inclusion of language in the renovation/construction contractor's statement of work requiring the use of low Volatile Organic Compound (VOC) or other low-emitting chemicals, whenever possible. This is especially important when construction renovations are occurring in an occupied or adjacent area or when the possibility of entrainment into the fresh air supply exits.
- B. The Agency will isolate areas of renovation from occupied areas that are not under construction. When employees could be affected, to the maximum extent possible, the Agency will perform the work during non-working hours and weekends.
- C. The Agency and Union recognize that indoor air pollution may be produced by the emission or evaporation (off-gassing) of chemicals found in building materials and furnishings.
 - 1. The Agency, to reduce the effects of off-gassing, will ensure that there is adequate ventilation in the work area.
 - 2. The Agency will obtain the Material Safety Data Sheets (MSDS) for all building materials and furnishings and make a copy available to the HSC or a Union representative upon request to the Administrative Services Group.
 - 3. The Agency will furnish relevant health information to an employee's physician upon request.
 - 4. When an employee has provided medical documentation of adverse health effects from off-gassing, the Agency will improve ventilation to the employee's work area or relocate the employee to an area that has adequate ventilation.
 - 5. The Agency will adhere to HHS design standards which specify use of low VOC emitting furnishings, carpeting, flooring, and other interior finishes.

Section 9. Violence in the Workplace

The prevention of violence in the workplace is of mutual interest to both the Agency and the Union. Threatening or intimidating behavior and violence in the workplace are unacceptable forms of conduct and will not be tolerated. The CMS Workplace and Domestic Violence Policy will be posted on the CMS intranet.

Section 10. Drug Testing

Agency drug testing will be carried out in accordance with all applicable law and Government-wide rule and regulation. The methods and procedures used for drug testing will be in accordance with the HHS Drug-Free Workplace Drug Testing Program.

Article 10: Hours of Work

Section 1. Purpose

The purpose of this Article is to prescribe the policies and procedures covering hours of work for all employees in accordance with applicable law and Government-wide rule or regulation.

- A. The Parties recognize that in order to build a high quality customer focused team, it is necessary to create a high quality, family-friendly work environment that will attract and retain highly qualified professional employees.
- B. The Parties agree that the primary mission of the Agency is to serve the needs of its customers and partners. Within the need to serve both customers and partners, the Parties are committed to establishing and supporting flexible work arrangements so employees can balance work with personal and family life.

Section 2. Definitions & Basic Provisions

A. Normal Business Day and Basic Workweek

The normal business day consists of an eight-hour work day, 8:30 a.m. to 5:00 p.m. (including a 30-minute non-paid, lunch break), Monday through Friday, inclusive, which taken together form the basic work week. The occurrence of holidays will not affect the designation of the basic workweek.

A lunch break **MUST** be taken within the scheduled work day. Employees may not skip the time allocated for lunch to shorten the length of the work day, nor start or end the day with the lunch break. However, employees do not have to take their 30-minute, non-paid lunch break in conjunction with taking leave (e.g., if an employee on an 8 ½-hour flextime schedule works the first five hours of the day without a lunch break, he or she may request three hours of leave for the remainder of the day and would not need to take the lunch break).

B. Basic Work Requirement

The basic work requirement is the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by charging leave, excused absence, holiday hours, compensatory time off, or time off as an award. For full-time employees, the basic work requirement is 80 hours per biweekly pay period. A part-time employee's basic work requirement is the number of hours the employee is scheduled to work in a biweekly pay period.

C. Tour of Duty

The tour of duty defines the limits within which an employee must complete his or her basic work requirement. Exceptions to the below listed tours of duty are any evening, night, and weekend schedules established under Section 3 of this Article.

1. Central Office (All Baltimore Locations), Regional and Satellite Offices

The Agency's tour of duty is Monday through Friday, 6:00 a.m. to 6:30 p.m.

2. Washington, D.C. and Bethesda, MD Offices

The Agency's tour of duty is Monday through Friday, 7:00 a.m. to 9:00 p.m.

D. Extended Tour of Duty

The extended tour of duty, 6:30 p.m. through 10:00 p.m. Monday through Friday, and 6:00 a.m. through 7:00 p.m. on Saturdays and Sundays, defines the limits within which an employee may be authorized to earn credit hours, subject to the limitations described in Section 7, and does not specifically apply to any overtime provisions. Each component head has the authority to extend the tour of duty to 10:00 p.m. Monday through Friday and/or to include Saturday and Sunday extended hours. Employees authorized to earn credit hours during the extended tour on Mondays through Fridays will first complete their regular working hours by 6:30 p.m. (or 7:00 p.m. for Washington, D.C. and Bethesda, MD). An employee on a 9 ½- or 10 ½-hour flextime schedule may earn credit hours on his or her non-work day. Credit hours must be earned as required by this Article.

The extended tour of duty hours do not change the operational hours of the Agency's buildings. If a building is not operational (e.g., providing utilities and security staff) past a certain time within the extended tour of duty, employees working in the affected buildings would need to plan to complete their credit hours in accordance with building lease and operational requirements.

With management approval, an employee may request to earn credit hours within the extended tour of duty from an alternative duty station (hereinafter referred to as "ADS"). In those instances when the employee is not already working at an ADS, the employee must submit an episodic flexiplace request. (See Section 7.A. of this Article, as well as Article 29.)

E. Regular Working Hours

Those hours (i.e., for full-time employees, 8 ½, 9 ½, or 10 ½ hours) an employee is scheduled in advance to work within the Agency's established tour of duty. These schedules include the 30-minute non-paid lunch break.

F. Flexible Work Schedule ("Flextime")

A flexible work schedule (hereinafter referred to as "flextime") is defined as an 8 ½-hour (or less, if part-time), 9 ½-hour, or 10 ½-hour work schedule, Monday through Friday, in which an employee is allowed to vary his/her arrival time on a daily basis within the Agency's established arrival times outlined in Section 5 of this Article.

1. A full-time employee on an 8 ½-hour flextime schedule works ten 8 ½-hour days during the biweekly pay period.
2. A full-time employee on a 9 ½-hour flextime schedule works eight, 9 ½-hour days, one 8 ½-hour day, and one non-work day during the biweekly pay period.
3. A full-time employee on a 10 ½-hour flextime schedule works eight, 10 ½-hour days and two non-work days during the biweekly pay period.

G. Credit Hours

Credit hours are hours that an employee elects to work, subject to advance management approval and under a flexible work schedule, that are in excess of an employee's basic work requirement so as to vary the length of a subsequent work week or a work day.

H. Telecommuting Programs (Telework/Flexiplace)

Telework/flexiplace enables an employee on a flexible work schedule to work at an ADS, subject to management approval and the eligibility criteria outlined in Article 29. An ADS may include an employee's residence or other location approved by management. The Agency's telecommuting programs are outlined in Article 29.

I. Core Days

Core days are those days of the week on which an employee on a 9 ½ or 10 ½-hour flextime schedule may not have a scheduled non-work day. The Agency may designate no more than two core days per week for any component.

Section 3. Work Schedule Adjustments

The Agency may set different work schedules for selected positions. Any temporary or permanent departure from a work schedule (including, but not limited to, requiring the employee to come off of a 9 ½- or 10 ½-hour schedule and work a traditional five day workweek; designating different starting/ending times for an employee on any schedule; changing biweekly work schedules to allow for attendance at meetings, training, or travel; changing regular working hours to evening, night, and weekend working hours) will be based on the following:

- A. Workload or programmatic objectives;
- B. The nature of the work performed; or
- C. The need to respond to or be available to the public or to Agency or external customers.

Affected employees will be given as much advance notice as possible when a change needs to be made. If the circumstances requiring such a change permit, the Agency will provide the employee with advance notice of at least one pay period. If the change is for a temporary period of time, the Agency will limit this change to as short a time as necessary to meet workload or programmatic objectives.

Prior to making any involuntary temporary or permanent change from an employee's regular working hours within the Agency's tour of duty to an evening, night, or weekend schedule, the Agency will provide notice, and upon request, bargain with the Union to the extent required by law.

Section 4. Work Schedule Options

All employees who do not occupy positions designated for the work schedules identified in Section 3 above may work one of the following work schedule options to fulfill their basic work requirement, subject to the requesting and approval procedures for each work schedule option:

- A. 8 ½-hour flextime schedule;
- B. 9 ½-hour flextime schedule; or

C. 10 ½-hour flextime schedule.

An employee, with prior management approval, may convert his/her schedule during any pay period when he or she is on official travel, to participate in training, or has jury duty, etc. Managers (and employees with manager concurrence) may adjust biweekly work schedules of employees in travel or training status to a schedule that will fulfill the purpose of the training or travel.

Section 5. Central Office (All Baltimore Locations) and Regional/Satellite Office Arrival/Times

A. 8 ½-hour or less (part-time) flexible schedules

1. Employees in Central Office (all Baltimore locations) and Regional/Satellite Offices, other than those in the Pacific time zone, who work an 8 ½-hour flextime schedule must report for duty between 6:30 a.m. and 10:00 a.m.*
2. Employees in the Washington, D.C. and Bethesda, MD offices who work an 8 ½-hour flextime schedule must report for duty between 8:00 a.m. and 10:30 a.m.
3. Employees in Regional or Satellite Office locations in the Pacific Time Zone who work an 8 ½-hour flextime schedule must report for duty between 6:00 a.m. and 9:30 a.m.

*When there is no negative impact in a particular component on its ability to achieve programmatic objectives and/or the need to respond to or be available to the public or to Agency external customers, the Agency may designate a 6:00 a.m. start time for employees on an 8 ½-hour flextime schedule.

4. For part-time employees, managers can approve different arrival bands than those listed in Sections 5 A-C of this Article on those days part-time employees are scheduled to work fewer than 8 ½, 9 ½, or 10 ½ hours.

B. 9 ½-hour flextime schedules

1. Central Office (All Baltimore Locations) and Regional/Satellite Offices

Employees who work a 9 ½-hour flextime schedule must report for duty between 6:00 a.m. and 9:00 a.m. On their 8 ½-hour day, employees must report for duty between 6:30 a.m. and 10:00 a.m. (For Regional or Satellite Office locations in the Pacific Time Zone, employees must report for duty between 6:00 a.m. and 9:30 a.m. on their 8 ½-hour day.)

2. Washington, D.C. and Bethesda MD Offices

Employees who work a 9 ½-hour flextime schedule must report for duty between 7:00 a.m. and 9:30 a.m. On their 8 ½-hour day, employees must report for duty between 8:00 a.m. and 10:30 a.m.

C. 10 ½-hour flextime schedules

1. Central Office (All Baltimore Locations) and Regional/Satellite Offices

Employees who work a 10 ½-hour flextime schedule must report for duty between 6:00 a.m. and 8:00 a.m.

2. Washington, D.C. and Bethesda, MD Offices

Employees who work a 10 ½-hour flextime schedule must report for duty between 7:00 a.m. and 8:30 a.m.

D. Flex Out/Flex In

Employees on flextime schedules are allowed to flex out/flex in during the work day subject to advanced management approval, unless impractical. An employee is required to document his or her request to flex out and/or his or her request to flex out/in departure/arrival times (e.g., by sending the manager an email or calling him or her when she/he departs or returns). If an employee cannot complete his or her daily work schedule before 6:30 p.m. (or 7:00 p.m. in Washington, D.C. and Bethesda, MD), the employee will be charged leave at his or her request or, if warranted, charged AWOL.

E. Adjustments of Arrival/Departure Times

Occasionally, an employee may be required to arrive/depart at a specific time on a particular day (e.g., to attend a meeting, to participate in a multi-time zone teleconference, etc.). If the circumstances requiring such a change permit, the Agency will provide the employee with a one-day notice.

Section 6. 9 ½- and 10 ½-hour Flextime Schedules

A. Requesting Procedures

Employees will have the option, prior to the beginning of any calendar quarter (January, April, July, and October), to request a 9 ½- or 10 ½-hour flextime schedule or modify their non-work day designation. However, new employees may request to start working either of these schedules the pay period immediately following his/her start date. There is no designated form, but requests must be submitted via email at least five working days before the beginning of a calendar quarter. However, employees may not begin working the new schedule until the beginning of the first full pay period within that quarter. Employees may withdraw from a 9 ½- or 10 ½-hour flextime schedule at the end of any pay period.

1. Employees requesting a 9 ½-hour flextime schedule must designate the same non-work day each biweekly pay period.
2. Employees requesting a 10 ½-hour flextime schedule must designate the same non-work day each week.

B. Review and Approval Process

1. Requests will be reviewed at least two working days prior to the beginning of a calendar quarter. Managers may deny an employee's request for a 9 ½- or 10 ½-hour schedule or require the employee to designate a different non-work day when the manager determines that the employee's participation could impact the work unit's coverage requirements, the nature of the work performed, or the need to respond to or be available to the public or to Agency or external customers. If the requested schedule is denied, the manager will provide the employee with an explanation for the denial.

2. A manager may consider an employee's request to work a 9 ½- or 10 ½- hour flextime schedule outside the beginning of any calendar quarter. However, an employee may not request to change their 9 ½- or 10 ½-hour schedule more than four times in a calendar year.

C. Change of Employee's Designated Non-work Day

A manager may change an employee's designated non-work day when the manager determines that the employee's absence on the designated non-work day could impact the work unit's coverage requirements, the nature of the work performed, or the need to respond to or be available to the public or to the Agency or external customers. Upon employee request and approval by management, an employee may have his/her designated non-work day changed effective at the beginning of the next pay period.

D. Holidays

1. Holiday Pay

The Agency has a flexible work schedule (i.e., employees are allowed to determine their own work schedule during the Agency's tour of duty) and not a compressed work schedule (i.e., the Agency determines an employee's work schedule during its tour of duty) option.

- a. In accordance with 5 U.S.C. § 6124, if any employee on a flexible work schedule is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive Order, such employee is entitled to eight hours of pay for that day. In the case of a part-time employee, the employee is entitled to holiday pay for the number of hours the employee is scheduled to work on that day, not to exceed eight hours.
- b. Therefore, employees working a 9 ½- or 10 ½-hour flextime schedule who are prevented from working on a day designated as a holiday or an "in lieu of" holiday by Federal statute or Executive Order are entitled to only eight hours of pay for the holiday. Employees on these schedules will account for the additional one or two hours by requesting one or two hours of leave.
- c. In the case of a 9 ½-hour employee, in order to account for the additional one hour, the employee may request at least one pay-period prior to changing his or her 8 ½-hour day to the holiday.

2. "In Lieu of" Holiday

If a Federal holiday falls on an employee's non-work day, the employee's preceding work day will be the designated "in lieu of" holiday (e.g., if the actual holiday falls on an employee's non-work day Monday, the employee's in lieu of day would be on Friday).

- a. **Exception:** If the "in lieu of" holiday falls within a different pay period, the subsequent work day after the actual holiday will be the designated "in lieu of" holiday. If an actual holiday falls on a **Sunday** at the beginning of a pay period, and the Federal holiday is observed on a Monday, the **subsequent** work day (rather than the preceding work day) will be the

employee's designated "in lieu of" holiday. For example, the Fourth of July falls on a Sunday at the beginning of the pay period, the Federal holiday will be observed on Monday, July 5. In this situation, the employee's "in lieu of" holiday would be Tuesday, July 6.

The Agency head may also prescribe rules under which a different "in lieu of" holiday is designated when the Agency head determines that a different "in lieu of" holiday is necessary to prevent an "adverse agency impact."

- b. The Agency may also change an employee's schedule for operational needs.

Section 7. Credit Hours

A. Eligibility

1. Credit hours may be earned by those employees working on any of the Agency's flextime schedules. Employees who occupy positions designated for fixed work schedules are not eligible to earn credit hours.
2. Credit hours may be earned while working at an Agency office location or at an ADS, in accordance with the procedures under Section 7.B. below. If the credit hours are approved to be earned at the ADS, the employee must have an approved telework request for that day in the Agency's online telecommuting system (See Article 29).

B. Requesting/Approval Procedures

1. An employee will make a written request in advance to work credit hours (either on the "Request for Approval to Earn Credit Hours" form or via email), except where it is impractical for the employee to obtain advanced approval. The request will be approved or denied by the manager or his/her designee as soon as possible. The ability to work credit hours on a Saturday or Sunday must be requested and approved in advance, during the regular workweek, without exception.
2. If the request for credit hours is denied, the manager will provide the employee with an explanation for the denial.
3. Upon request of the employee, the earning of credit hours on weekdays should be approved retroactively if the circumstances warrant (e.g., where it was impractical for the employee to obtain advance approval).
4. When credit hours are approved and overtime is subsequently made available prior to the working of the credit hours, the employee will be afforded the opportunity to elect to work the overtime. (See Overtime Provisions outlined in Section 9 of this Article).

C. Earning Credit Hours

1. Eligible employees may earn credit hours on weekdays provided there is work available for the employee and such work can be performed at the requested time(s).
2. Eligible employees may earn credit hours on Saturdays and Sundays only when the specific work to be accomplished is determined to be appropriate by the manager.
3. Credit hours may be earned during the Agency's established tour of duty and the applicable extended tour of duty.
4. Employees may begin to earn credit hours only after completion of their regular working hours for that day, unless earned on weekends or the employee's non-work day. Credit hours may be earned in ¼-hour increments.
5. Employees are limited to earning no more than eight weekend credit hours per pay period.
6. Employees must ensure that their final approved credit hours are submitted to their time keeper within the same pay period in which the hours are earned, unless the hours are earned at the end of the pay period. If the hours are earned at the end of the pay period, the hours should be submitted no later than the following pay period.
7. A full-time employee can accumulate and carry over from one pay period to another a total of no more than 24 credit hours. A part-time employee can accumulate and carry over from one pay period to another a total of no more than one-fourth of the hours in such employee's biweekly basic work requirement.

D. Using Credit Hours

1. Use of credit hours will be subject to the same criteria for approval as annual or sick leave. An employee may elect to use earned credit hours for all or any part of any approved leave. Credit hours must be earned before they may be used. Credit hours may be used in ¼-hour increments. Any credit hours in excess of 24-hours must be used within the pay period in which they are earned or they will be forfeited.
2. Credit hours are retained until an employee retires, resigns, or separates from the Federal government. If any of the above happens, the hours will convert to cash based on the employee's current hourly rate.

Section 8. Time and Attendance Certification

- A. All employees are required to record and certify their attendance in accordance with 5 U.S.C. Chapter 61.
- B. Time and attendance certification procedures will be carried out under the Agency's electronic time and attendance system.
 1. Employees will use the Agency's electronic time and attendance system to verify their time records each pay period.

2. The act of verifying in the electronic time and attendance system means that the employee certifies that his or her time card for that pay period is correctly stated and that he or she understands that willful falsification of any time records may result in severe disciplinary action, including a fine of not more than \$10,000 or imprisonment or both (18 U.S.C. §§ 287, 1001).
3. A manager may institute additional certification or time and leave reporting procedures for an employee if the manager determines that additional accountability procedures are necessary because of time and leave concerns with that employee or for a group of employees if the manager determines that additional accountability procedures are necessary to meet the legitimate business needs of the unit (e.g., sign in/sign out board).

Section 9. Overtime Provisions

- A. Overtime will be paid in accordance with either the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201-219, or Title 5 of the U.S. Code. Overtime must be officially authorized in advance.
- B. In accordance with 5 U.S.C. Chapter 61, an employee waives his or her right to premium pay for overtime work (including compensatory time in lieu of overtime) for the time spent working credit hours.
- C. When used, overtime will normally be distributed to employees whose performance is at least at the Achieved Expected Results level.
- D. Overtime will not be distributed or withheld as a reward or penalty.
- E. When an employee, whether covered by the FLSA or exempt, works regular overtime, such overtime will be scheduled and paid in increments of 15 minutes. When an employee, whether covered by the FLSA or exempt, works irregular/occasional overtime, such overtime will be scheduled and paid in increments of 15 minutes.
- F. With advance management approval, overtime may be worked before or after the Agency's tour of duty, on weekends, and at an Alternative Duty Station (ADS). If the overtime is to be completed at an ADS, the employee may be required to submit an episodic flexiplace request if the employee is not already approved to work at an ADS on that day.
- G. When approved by the Agency, employees can accrue and use compensatory time in accordance with applicable law and Government-wide rule and regulation. When feasible, the Agency will grant an employee's request for compensatory time rather than payment for overtime. Compensatory time is retained for 26 pay periods before converting to cash based on the hourly rate at the time the hours were earned.
- H. Employees who: 1) are called back for a period of overtime; or 2) work overtime on Saturday and/or Sunday, are entitled to a minimum of two hours of overtime pay. Employees who work on a Federal holiday are entitled to a minimum of two hours of holiday pay.

- I. When scheduled overtime is to be mandated for all employees in the operating entity, employees will be notified at least two days in advance. Notice of one day will be given for all other scheduled overtime work whenever possible.
- J. When the Agency decides to use overtime, volunteers will be solicited from among qualified volunteers before using non-volunteers.
- K. Employees must ensure that their final approved overtime or compensatory hours are submitted to their time keeper within the same pay period in which the hours are earned, unless the hours are earned at the end of the pay period. If the hours are earned at the end of the pay period, the hours should be submitted within the following pay period.

Article 11: Union Use of Agency Facilities & Services

Section 1. Access to Internet

The Agency will furnish the Union with internet access for representational purposes.

Section 2. Telephone System

The Agency will equip each Agency-provided Union office space with a telephone system commensurate with its location (i.e., Central or Regional Office).

Section 3. Miscellaneous Services

The Agency agrees to provide routine cleaning and maintenance services in each Agency-provided Union office space and, where available, access to shuttle service and reasonable access and use of photocopiers for representational activities.

Section 4. Agency-Provided Office Space, Computers, and Furnishings

- A. The Agency agrees to provide office space to the Union to carry out its representational duties. When the need arises to make adjustments to Union office space, the Agency will provide notice and, upon request, bargain with the Union in accordance with Article 4 of this Agreement and to the extent required by law.
- B. The Union office located in Central Office will be provided with the following:
 - 1. Four docking stations and peripheral devices, four monitors, four printers, one fax machine; and
 - 2. Office furnishings (i.e., desks, chairs, lockable file cabinet).
- C. Each of the Union offices located in the Regional Offices will be provided with the following:
 - 1. One docking station and peripheral devices, one fax machine and one printer; and
 - 2. Office furnishings (i.e., desks, chairs, lockable file cabinet).
- D. The Union may use Agency conference rooms for representational discussions between employees and Union officials provided the conference space is available and provided the Agency determines the conference room is not needed for Agency work at the time requested. The Union will adhere to the conference room reservation process in place where the conference space is located. Conference rooms or any other Agency space may not be used for any non-representational activities (e.g., internal Union business activities).

Section 5. Mail

The Agency will provide the Union use of the Agency's mail system, including, where necessary, the external postage-paid mail system, to transmit or receive representational correspondence. The external (postage-paid) mail system will be limited to first class mail and will not be used where another system exists for internal transmission of mail (e.g., inter-office pick-up/delivery

service or email). The Union agrees that use of the Agency's internal and external mail systems will be limited solely to representational matters and will not be used for internal mass mailings or for any internal Union business activities (including the solicitation of membership, election of Union officials, and collection of dues) as set forth in 5 U.S.C. § 7131(b).

Article 12: Union Communications

Section 1. General Requirements

- A. The Union's access to and use of the Agency's communication resources (e.g., bulletin boards, publications racks, intranet, email) will not interfere with the mission or operation of the Agency.
- B. Any and all Union communications using Agency communication resources or distributed on Agency premises will not violate the law, advocate violating the law, or contain items relating to partisan political matters, and will not malign, disparage, or harm the character of any individual or the Agency.
- C. Any and all Union communications using Agency communication resources must not relate to any non-representational matters (e.g., internal Union business).

Section 2. Bulletin Boards

- A. The Agency agrees to provide the Union with use of approximately 33% of the space on official bulletin boards that the Agency has on its premises, subject to applicable local lessor and/or GSA policies. The Agency agrees to provide at least one Union bulletin board on each floor of buildings in which Agency employees have temporary or permanent work stations in accordance with this Section. The Union agrees that all postings will be on designated Union bulletin boards only.
- B. The Union agrees to furnish a copy of any information scheduled to be posted on the bulletin boards to the Agency Labor Relations Officer at least one work day in advance prior to posting.

Section 3. Distribution of Paper or Hard Copy Materials

- A. The Union may distribute paper (i.e., hard copy or leaflet) material on the Agency's premises in work areas to individual employees, subject to internal security requirements, and in the non-work areas. All such material will be properly identified as official Union material.
- B. The Union agrees to furnish a copy of any paper material scheduled for distribution to the Agency Labor Relations Officer at least one work day in advance prior to distribution.

Section 4. Publication Racks

The Agency will provide space for Union publication racks in each building for the purpose of distributing Union newspapers and other Union material.

Section 5. Intranet and Copies of Agreement

- A. The Agency will place the Agreement on the Agency's intranet home page and provide the Union's Principal Designee with a copy of the Agreement in the currently acceptable electronic format.

- B. The Agency will make appropriate arrangements to accommodate visually-impaired employees.
- C. The Agency will provide the Union with 100 hard copies of the Agreement at no cost.

Section 6. Union Fairs at the Agency's Baltimore Single Site

The Union will be allowed to have Union fairs, normally not more than four times per year. Each Union fair will last no longer than three consecutive days. The Union will provide at least one week notice to the Collective Bargaining Official prior to the date of the fair. The Union will hold the Union fairs inside the CMS cafeteria located on the lower level of the Central Building, 7500 Security Boulevard, Baltimore, MD (CO). The Union will abide by all rules of the General Services Administration (GSA) regarding permits and will abide by all CO cafeteria rules regarding food, including any food provided during the free lunches the Union wishes to offer to employees during lunch periods. The Agency will support the Union's efforts to obtain permits from GSA. The Union will use no more than four tables along the inside perimeter of the cafeteria at tables next to the glass doors that exit to the lobby. The Union may staff the tables with no more than six of its representatives at one time.

Section 7. New Employees

At all of its locations, the Agency will invite the locally designated CMS Union representative(s) to meet new employees at the time of their entrance on duty or at such other times mutually agreed to by both Parties. Official time will be granted for no more than two Union officials/representatives to make a brief presentation to new employee(s) about the Union. The presentation will not exceed 30 minutes in duration. The Union agrees that this time will not be used for any internal Union business activities (including the solicitation of membership, election of Union officials, and collection of dues), as set forth in 5 U.S.C. § 7131(b).

The Union's time slot for its presentation at the Agency's Baltimore Single Site New Employee Orientation (NEO) program will be scheduled 30 minutes prior to the lunch period.

Section 8. Agency Intranet

- A. The Agency will provide the Union a "home page" on the Agency intranet for employee information on matters such as Union programs, benefits, and initiatives. The Union "home page" will be identified by an icon or link on the main Agency intranet menu/home page.
- B. The Union will have direct access to the Agency intranet for purposes of uploading or updating information on the Union's "home page."
- C. The Union will provide the Agency the names of its representatives who may authorize and/or upload information to the Union's home page and will update the list of names as needed.
- D. The information that the Union displays on its home page will be exclusively governed by the provisions set forth in this Section. Information placed on the Union's home page will comply with this Agreement.

Section 9. Email

- A. The Union may use email to communicate with employees by having access to established email groups. However, the Union will not use email to communicate partisan political material.
- B. The Agency email system shall not be used for any internal Union business activities (including the solicitation of membership, election of Union officials, and collection of dues), as set forth in 5 U.S.C. § 7131(b).
- C. The Agency will provide to the Union a list of names of all bargaining unit employees on a quarterly basis.

Article 13: Parking and Transportation

Section 1. Parking Policies

- A. Parking facilities managed by the Agency will be operated in accordance with CMS policies, applicable law, Government-wide rule or regulation, and the provisions of this Article.
- B. The Agency will provide adequate, convenient parking at no cost to employees at the Agency's Central Office (all Baltimore locations).
- C. All employees must register their vehicle(s) in the Agency's online parking system in accordance with Agency parking policies. Employees will update the system with any changes as required under Agency parking policies (e.g., new tags, new vehicle). If applicable, employee parking permits must be displayed in accordance with Agency parking policies.
- D. At the Agency's Central Office (all Baltimore locations), employees will park in employee assigned areas between the hours of 6:00 a.m. and 3:00 p.m. Employees may park in any space on a first-come basis, excluding disabled, numbered-reserved, reserved, and those spaces with a posted sign (i.e., Federal Police, Government or GSA vehicles). Between the hours of 3:00 p.m. and 6:00 a.m. on weekdays, and anytime on weekends and holidays, employees may park in any space other than numbered-reserved, reserved, disabled spaces, and those spaces with a posted sign (i.e., Federal Police, Government, or GSA vehicles).
- E. When implementing any changes, the Agency will provide notice, and upon request, bargain with the Union to the extent required by law and in accordance with the mid-term bargaining provisions of this Agreement.
- F. When an employee receives a citation on Agency parking facilities, the employee has the right to defend such ticket in court. In cases where the employee's citation is rescinded and/or the employee is found not guilty, the Agency will convert any leave the employee requested to defend himself/herself to administrative leave. This includes time required to report to, attend, and return from court.
- G. Employees may request and receive a parking space for medical purposes in accordance with applicable law, Government-wide rule or regulation, and Agency parking policies.

Section 2. Shuttle Service

When provided by the Agency, shuttle service will be made available to employees. Questions and/or complaints about shuttle service, as well as reservations, may be directed to the Customer Service Desk or other designated official. Accommodations will be made for employees with disabilities. The Agency will monitor the shuttle service to ensure safe and courteous operations.

Section 3. Transportation Policies

Public transportation subsidies will continue to be provided where funds and authorizing regulations permit, in the following manner:

A. Transit/Vanpool Benefit

- Employees will be paid a transit/vanpool benefit equal to their eligible commuting costs, not to exceed the Internal Revenue Service (IRS) tax-free maximum per month. Any increases in the IRS income-tax exclusion for transportation benefits during the term of the Agreement will be implemented by the Agency by the next quarterly allotment of such benefits following the date of the increase.
- B. Employees will follow the applicable procedures established for their official duty station location for the transit/vanpool/bike2work benefits, which includes completing, signing, and certifying all necessary forms.
- C. Employees who commute to and from work using their personal vehicles are not eligible for the public transportation subsidy payment. In order to be eligible for a transit subsidy, employees must only drive their personal vehicles to work on an infrequent basis (e.g., when required for a medical appointment). Obtaining a public transportation subsidy payment when ineligible for such a payment may serve as the basis for disciplinary action.
- D. The Agency will permit employees to advertise ridesharing opportunities on the CMS intranet.
- E. The Agency will work with local public transportation agencies, to the extent possible, to make public transportation available to accommodate mobility-impaired employees.

Article 14: Reduction-in-Force and Transfer of Function

Section 1. Purpose

This Article establishes and describes the procedures the Agency will take in the event of a reduction-in-force or transfer of function in accordance with applicable law (5 U.S.C. §§ 3502 and 3203), Government-wide rule or regulation (5 C.F.R. Part 351), and this Article. This Article is intended to protect the interests of employees while allowing the Agency to exercise its rights and duties in carrying out the mission of the Agency. The Agency is responsible for assuring that 5 C.F.R. Part 351, and this Article are uniformly and consistently applied to any one reduction in force.

Section 2. Definitions

For purposes of this Article, the following terms and expressions will have the following meanings in accordance with 5 C.F.R Part 351:

A. Reduction-In-Force (RIF):

A “reduction in force” (RIF) means the release of a competing employee from his or her competitive level by furlough for more than 30 days; separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; the exercise of reemployment rights or restoration rights; or reclassification of an employee's position due to erosion of duties when such action will take effect after the Agency has formally announced a reduction-in-force in the employee's competitive area and when the reduction-in-force will take effect within 180 days.

B. Transfer of Function:

Transfer of function means the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected; or the movement of the competitive area in which the function is performed to another commuting area.

C. Reorganization:

The planned elimination, addition, or redistribution of functions or duties in an organization.

D. Undue Interruption:

Undue interruption means a degree of interruption that would prevent the completion of required work by the employee 90 days after the employee has been placed in a different position. The 90-day standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands. However, a work program would generally not be unduly interrupted even if an employee needed more than 90 days after the reduction-in-force to perform the optimum quality or quantity of work. The 90-day standard may be expanded if placement is made under 5 C.F.R. Part 351 to a low priority program or to a vacant position.

E. Competitive Level:

A competitive level consists of all positions in a competitive area that are in the same grade (or occupational level) and classification series, and that are similar enough in duties, qualification requirements, pay schedules, and working conditions so that the Agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption.

Section 3. Freezing of Vacancies

The Agency will normally freeze all vacant positions 60 days prior to the effective date of the RIF. The Agency may exclude certain positions from the freeze when the freeze on these vacant positions would affect the Agency in the effectiveness or efficiency of its operations or would result in additional costs (e.g., overtime, travel, or per diem). When the Agency decides to fill a vacant position after the effective date of the RIF, whether previously frozen by virtue of the RIF or in the creation of new vacancies, employees who have been demoted will be offered the vacancy, provided the employee is qualified or has been given a waiver of qualifications for the intended position. Employee entitlement to this special consideration will be determined in accordance with Section 20 of this Article.

Section 4. Employee Notification

An individual employee who is adversely affected by a RIF or transfer of function action will be given an advance general notice of at least 30 days prior to specific notice. A specific notice will be issued not less than 60 days prior to the effective date of the action. In addition to the 30 days general notice, employees reassigned to a location outside their commuting area will be given at least 90 days specific notice. In addition to information required by this Article, all notices will contain the information required by 5 C.F.R. Part 351. When a reduction in force is caused by circumstances not reasonably foreseeable, the Director of OPM, at the request of the Agency, may approve a notice period of less than 60 days. The shortened notice period must cover at least 30 full days before the effective date of release. Upon requesting the shortened notice period from OPM, the Agency will concurrently notify the Union. Upon the Union's request, the Agency will meet and confer with the Union about the shortened notice period.

Section 5. Employee Information

The Agency will provide complete information needed by employees to fully understand the action and why they are affected. At a minimum, the Agency will:

- A. Inform all employees, as fully and as soon as possible, of the plans or requirements for the action in accordance with applicable rules and regulations;
- B. Inform all employees of the extent of the affected competitive area, the regulations governing such action, and the kinds of assistance provided to affected employees;
- C. Electronically maintain and publicize a list of Agency-wide vacancies and information regarding other Government-wide Federal vacancies, such as USAJobs; and

- D. Conduct a placement program within the Agency to minimize the adverse impact on employees affected by the RIF. The placement program will include counseling for employees on opportunities and alternatives available to affected employees.

Section 6. Personnel Files

The Union may review any employee's Official Personnel Folder (OPF) at an employee's request in writing if the employee believes that the information used to place him/her on the retention is inaccurate, incomplete, or not in accordance with law, Government-wide rule or regulation, or the provisions of this Article.

Section 7. Records

The Agency will maintain all lists, records, and information pertaining to actions taken under this Article for at least two years in accordance with applicable law and Government-wide rule or regulation.

Section 8. Retention Register

A copy of any retention registers will be given to the Union. A copy of the preliminary retention register will be made available to the Union at the time the general notices are issued.

Section 9. Employee Use of Agency Facilities

Employees who are identified for transfer of function, separation, or change to a lower grade as a result of a RIF under this Article will be entitled to reasonable use of the following facilities and/or services for the purpose of locating suitable employment:

- A. Telephone/fax;
- B. Photocopy equipment;
- C. Interagency mail/email/internet;
- D. Personal computer; and
- E. Career or EAP counseling provided by the Agency.

Section 10. Employee Use of Duty Time

Employees who are identified for transfer of function, separation, or change to a lower grade as a result of a RIF under this Article will be granted a reasonable time while in a duty status without charge to leave for the following:

- A. Preparing, revising, and reproducing job resumes and/or job application forms;
- B. Participating in employment interviews; and
- C. Reviewing job bulletins, announcements, etc.

Section 11. Performance Appraisals

Except for employees who are re-rated after a period allowed in 5 C.F.R. Part 432, annual performance appraisals for purposes of retention standing will be frozen 60 days prior to the effective date of the action. The three latest annual appraisals of record received during the four-year period prior to the effective date of the freeze will be used to determine eligibility for additional credit toward an employee's service computation date. Employees who do not have three annual appraisals will be granted performance credit in accordance with 5 C.F.R. Part 351.504.

Section 12. Release from Competitive Level

When an employee is to be released from his/her competitive level, the "best offer" is made. The offer will be as close to the employee's current grade as possible and in the same commuting area, if possible.

Section 13. Employee Response to Notice of Offer

Upon receipt of specific notice notifying the employee that he/she is offered a reassignment or change to lower grade or will be released from his/her competitive level, the employee will have until the end of the specific notice period during which to accept or reject the offer made.

Section 14. Reassignment to a Different Competitive Area

Reassignment of employees outside of their competitive area will be avoided when possible. When the Agency is not able to place an employee within the competitive area and the employee accepts a reassignment requiring a move to another competitive area, the Agency will reimburse the employee for his or her move at the rates authorized in accordance with applicable law and Government-wide rule or regulation.

Section 15. House Hunting

When the Agency assigns an employee to a position as a result of a transfer of function or RIF requiring a move to another geographic area, the employee will be granted a reasonable period of duty time, not to exceed 10 days, to locate housing and make related arrangements at the new work location. If the Agency determines it is appropriate under the circumstances, the Agency may grant the employee additional duty time. The employee will be placed in travel status for such trips and will receive travel and per diem reimbursement in accordance with applicable law, and Government-wide rule or regulation.

Section 16. Time Allowed for Relocation

Employee reassigned to a different commuting area who relocate will be allowed a reasonable period of time, as necessary, to complete the move and report to work at the gaining activity.

Section 17. Displaced Employees

The Agency will provide any employee to be separated by RIF or transfer of function with the appropriate information regarding unemployment benefits available to them.

Section 18. Details

Employees on detail will not be released during a RIF from the position to which they are detailed but, rather, from the affected employee's permanent position of record.

Section 19. Transfer of Function

- A. In accordance with 5 C.F.R. Part 351, Subpart C, when a transfer of function occurs, the Agency will identify the positions of competing employees with the transferring function. The Agency will identify the number of positions needed to perform the transferring function in the gaining competitive area. To determine which employees are identified for transfer, the Agency must establish a retention register that includes the name of each competing employee who performs the function. Competing employees listed on the retention register are identified for transfer in the inverse order of their retention standing.
- B. The Agency may permit other employees in the competitive area losing the function to volunteer for transfer with the function in place of employees identified by the Agency for transfer. If the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, the Agency may give preference to the volunteers with the highest retention standing or make selections based upon other appropriate criteria.

Section 20. Re-Promotion Rights of Affected Employees

For a period of two years, affected employees demoted by an action covered by this Article will be re-promoted to vacancies as they occur according to the following criteria:

- A. The Agency determines to fill the vacancy;
- B. The employee has the requisite skills and abilities for the position without undue interruption; and
- C. Another qualified employee does not have a higher retention standing.

Section 21. Reemployment Priority Rights of Affected Employees

Career and career-conditional employees who have received a specific RIF notice and have not declined a valid job offer at no lower a rate than the current grade will be entered on the Department's Reemployment Priority List (RPL) for the commuting area in which the position was located in accordance with 5 C.F.R. Part 330, Subpart B. Employees will be listed for all positions for which they are qualified and available. Career employees may remain on the list for two years, career-conditional employees for one year, from the date of separation unless removed earlier through placement or declination of an offer.

Article 15: Contracting Out

Section 1.

Prior to contracting out work performed by bargaining unit employees, the Agency will provide notice and, upon request, bargain with the Union to the extent required by law and in accordance with the mid-term bargaining provisions of this Agreement.

Section 2.

Employees' privileges and benefits will not be diminished by allowing contractors to participate in employee programs. Such privileges include, but are not limited to, health screening, health fitness programs, shuttle services, and Government-sponsored training.

Article 16: Training and Career Development

Section 1. General Principles

- A. The Parties agree that the primary purpose of training is to develop employees' skills and knowledge to attain CMS objectives. The Parties agree that training will be provided that is necessary for the performance of assigned duties or to advance employees' careers in the Agency. Subject to funding limitations, career development programs will be provided to meet projected human resource requirements.
- B. The individual should continually strive for his/her own improvement. This can be accomplished by keeping abreast of developments in one's field of endeavor, being alert to one's own training needs, and participating in various self-improvement activities, such as off-duty classes, membership in professional societies, etc.
- C. In accordance with 5 C.F.R. Part 410.402, employees are not authorized to receive overtime, compensatory time, or credit hours while engaged in training through the government or any non-government entity, except in limited situations as provided by 5 C.F.R. Part 410.402(b).

Section 2. Individual Development Plans

- A. The Agency will encourage career development by providing individual employees the opportunity to develop an Individual Development Plan (IDP).
- B. The Agency will assist employees in preparing IDPs, including guidance on the relation of organizational needs to individual career goals.
- C. The Agency agrees to inform employees, at least annually, of the purpose and means of developing IDPs. IDPs are used to plan activities that accomplish learning objectives. Such learning activities include: courses, self-study, on-the-job training, and developmental work assignments.

Section 3. Training

- A. The Agency will inform employees, at least annually, of training policies, nomination procedures, and the availability of training programs. Upon request, the Agency will advise individual employees of training opportunities that meet identified learning objectives.
- B. Employees or managers may initiate discussions of individual training needs. These discussions may occur in response to Agency training announcements or at other times such as annual work planning, performance discussions, or coaching sessions. Such informal discussions may or may not be linked to an IDP.
- C. Training nominations and approval will be based on available funds and the employee's current position, career ladder, or IDP.
- D. When resources for training are limited, priority training needs will be based on fair criteria that are equitably applied. The Agency will give priority to training identified in

an employee's Developmental Assistance Plan (See Article 26, Section 13) and training required to perform the duties of an employee's current position.

- E. Employees will be notified of the approval/disapproval of their selection for training. Such notification should be given prior to the starting date of the training to ensure proper action may be taken to enroll/register the employee. Should an employee's selection be disapproved for lack of resources, the employee is encouraged to reapply at a later date and will receive first consideration for approval.
- F. As resources permit, the Agency will develop, with local educational institutions and other training sources, opportunities for employees to participate in long-term educational programs.
- G. If an employee takes an individual training course that exceeds 81 hours or costs the Agency more than \$2,501, the Agency may require the employee to sign an agreement to continue in service after the training. Excepted from this provision is Agency-provided on-the-job training and/or training required by the Agency. The period of service will begin immediately after such training and is equal to three times the length of the training. If the employee voluntarily separates from Government service, the Agency has a right to recover actual training and travel costs, except pay. Such recovery will be prorated based on the amount of continuing service that remains outstanding. The employee may request reconsideration of the recovery amount or request a waiver of this requirement, based on extenuating circumstances, e.g., disability retirement. Requests for reconsideration or waiver will be granted on a fair and equitable basis.

Section 4. Formal Career Development Programs

- A. The Agency offers career development programs to prepare employees for future jobs or assignments.
 - 1. Training and career development programs are described in the CMS Leadership Institute Catalog. Descriptions include eligibility requirements and program activities. The catalog is located on the Agency's intranet and within the CMS Learning Management System (LMS).
 - 2. The Agency will publicize career development programs when they are announced. Announcements will contain specific application instructions.
 - 3. The Agency will develop and implement career development programs, such as the Voluntary Non-Competitive Self-Referral Registry, training, coaching, and rotational assignments to increase employee knowledge of CMS programs and work processes.
- B. Employee Coverage
 - 1. Career development programs will be limited to the Agency's employees.
 - 2. Candidates will have competitive status or will be serving in excepted positions under Schedule A, 5 C.F.R. Part 213.3102(u) (individuals with disabilities), or 5 C.F.R. Part 307 (Veterans Recruitment Appointments).

C. Evaluating Criteria

1. Participation in career development programs will conform to the HHS Career Opportunities Training Agreement (COTA), all applicable Government-wide rule and regulation, and this Agreement.
2. To the maximum extent feasible, evaluating criteria will be consistent with the trainee/target position, job-related, and applied equitably to all employees. Variations in rating criteria will be based on real differences in the job.
3. Upon request, the Agency will provide employees counseling concerning how the employee might prepare for taking Agency administered tests.

D. IDPs for Career Development Program Participants

1. Employees selected for a career development program for which there is a trainee/target position will be given an IDP within 30 days of initial placement. The IDP will set forth all of the criteria that the employee must meet to reach the target position, what training will be provided, and the name of the manager responsible for making decisions on matters affecting the trainee.
2. The responsible manager will review the IDP with the trainee at least quarterly and document the employee's progress in fulfilling the plan. Trainees who satisfactorily perform the duties of the trainee position, meet the requirements set forth in the IDP, and meet all qualification requirements will, barring circumstances beyond the control of the Agency, be non-competitively reassigned or promoted, whichever is appropriate, to the target position.

E. Pay Retention

1. Prior to acting on an employee's request for reduction in grade, the Agency will fully inform the employee of the effects of such action.
2. Trainees who voluntarily request a reduction in grade to participate in the program, and subsequently are unable to qualify for the target position, will be reassigned to appropriate positions at the lower grade levels.

F. Employees who lack education requirements needed for target positions will be trained at the Government's expense during or after regular work hours, as outlined in the IDP.

G. Time to meet the Qualifications Standards for the General Schedule requirements will be credited at the rate of one month of training for two months of experience.

Section 5. Mentoring Program

- A. The Mentoring Program provides an opportunity for mentees to increase their awareness of CMS as an organization, learn new skills, and accept new challenges that build their self-confidence and self-motivation. By teaching, coaching, and encouraging others, mentors will improve their own skills in these areas while serving as a role model.
- B. The Mentoring Program will be open and announced to all CMS employees.

Article 17: Awards

Section 1. Background and Purpose

The Awards Program is an incentive program that provides recognition based on employee achievements that contribute to the Agency's mission of ensuring health care security for the nation's beneficiaries. The Awards Program is intended to link recognition to the accomplishments of the CMS mission, goals, and objectives, and motivate and reward employees to continually strive for excellence.

Section 2. Policy

- A. The following awards are part of the Agency Awards Program: Special Achievement (SA), Quality Step Increase (QSI), Performance Rating Monetary Award, and Agency/HHS non-monetary awards, such as Time-Off Awards (TOA) and Suggestion/Invention Awards.
- B. The Awards Program will be administered in accordance with law and Government-wide rule and regulation, including 5 C.F.R. Part 451.
- C. The Awards Program will be administered using objective, mission-related criteria and in a manner that recognizes exemplary performance and contributions to mission accomplishments.
- D. Employees who receive a Partially Achieved Expected Results (PA) or Achieved Unsatisfactory Results (UR) rating or are on a Performance Improvement Plan (PIP) are not eligible for performance rating monetary awards or QSIs.
- E. Unless otherwise prohibited by law, Government-wide rule or regulation, this Agreement, or Department of Health & Human Services (HHS) regulations, employees are not limited in the number or types of awards they may receive or the frequency with which they may receive them.

Section 3. Monetary Awards

- A. Special Achievement (SA) Award – a lump sum cash payment of up to \$1,000 for recurring or non-recurring exemplary achievements of employees. An SA award is granted in recognition of a special achievement or accomplishment of unusual dedication, productivity, and significance to the organization. The award recognizes the special effort in performing an aspect of a job or special assignment. The award is intended to recognize: (1) significant and measurable contributions to important organizational goals; (2) mastery and application of technical skills and/or thorough understanding of organizational goals that exerted a significant positive influence on the accomplishment of program goals or organizational recognition; or (3) the efficient and effective handling of particularly difficult assignment(s), where the results had a positive impact on the accomplishment of organizational goals. SA cash awards are not able to be converted to time off.
- B. Performance Awards – Performance awards are in recognition of sustained performance of high quality.

1. Quality Step Increase (QSI) – a performance award for an employee who has received a rating of record at the Achieved Outstanding Results level. The QSI provides an increase in an employee’s basic rate of pay from one step in his/her position to the next higher step of the grade. If an employee receives a QSI for his/her performance, he/she is not eligible to receive a Performance Rating Monetary Award (PRMA), described in 2 below. Employees who have been selected by their manager to receive a QSI may choose between receiving the QSI or a PRMA, but not both.

Eligibility – In order to be eligible for a QSI, employees must:

- a. Be below Step 10 of their grade level;
- b. Have received a rating of record of Achieved Outstanding Results;
- c. Demonstrate sustained performance of an outstanding quality;
- d. Not have received a QSI within the preceding 52 consecutive calendar weeks; and
- e. Occupy a permanent position.

Timing of QSI – A QSI does not affect the timing of an employee’s next regular within-grade increase (WGI), unless the QSI places the employee in Step 4 or Step 7 of his or her grade. In these cases, the employee must complete the full waiting period for the new step, (104 weeks for Step 4 or 156 weeks for Step 7). However, the time an employee has already waited continues to count towards the waiting period for the next WGI. The QSI provides the employee the benefit of receiving an additional WGI at an earlier date than he or she originally would have, without losing any time creditable towards his or her next WGI.

2. Performance Rating Monetary Award – a performance award that is tied to the rating of record may be given only at the conclusion of the appraisal cycle (December 31).
 - a. Employees who receive an Achieved Outstanding Results (AO) rating will receive a performance award payment up to 5% of their salary (including locality payment or special rate supplement) as of December 31, subject to the availability of the awards funds as allocated at the sole discretion of the Agency.
 - b. Employees who receive an Achieved More than Expected Results (AM) rating may be eligible for a performance award up to 4% of their salary (including locality payment or special rate supplement) as of December 31, subject to the availability of the awards funds, as allocated at the sole discretion of the Agency.
 - c. Employees who receive an Achieved Expected Results (AE) rating may be eligible for a performance award up to 3.0% of their salary (including locality payment or special rate supplement) as of December 31, subject to the availability of the awards funds, as allocated at the sole discretion of the Agency.

- d. Employees may request to convert the cash award amount of the performance award into time-off equivalent, not to exceed an aggregate calendar year total of 40 hours of time off.

Section 4. Non-Monetary Awards

- A. Time-Off Award (TOA) – grants an employee an excused absence without charge to leave or loss of pay and can range from four hours up to 40 hours per employee for each contribution. An employee may be granted multiple time-off awards each year not to exceed a total of 80 hours. A TOA grants time off from duty, without loss of pay or charge to leave, for a noteworthy accomplishment or personal effort that contributes to the quality, efficiency, or effectiveness of CMS operations. This award is generally given in recognition of significantly diligent and demanding work on a particular project. TOAs are generally given for periods of 1/2 day to three days (usually four to 24 hours) per award instance. TOAs cannot be converted to cash under any circumstances.
- B. Suggestion/Invention Award – provides recognition of an individual employee or group of employees for a suggestion/invention that the Agency determines results in tangible or intangible savings to the Government.
 - 1. The Agency will encourage employees to submit suggestions under the Agency’s Suggestion/Invention Program.
 - a. In the event a decision regarding a suggestion/invention is not made within 90 days of submission, the employee may request a written status report.
 - b. The reasons for non-adoption of employees’ suggestions/inventions may be sent electronically to the suggestor(s) upon request.
 - c. In the event a non-adopted suggestion/invention is later implemented within two years from the initial decision date, the employee has an additional 30 days from the date of implementation to resubmit the suggestion for reconsideration.
 - 2. The Agency will develop and communicate to employees a process for submitting suggestions/inventions. This process will facilitate both automated and non-automated submittals.
 - 3. Suggestion/Invention Awards will be administered in accordance with the scale of awards based on tangible or intangible benefits to the Government contained in HHS Instruction 451-1.

Section 5. Awards Process

- A. The following awards will be awarded by managers: time-off awards, quality step increases, performance rating monetary awards, special achievement awards up to \$1,000, and Agency/HHS non-monetary awards, such as suggestion/invention awards.
- B. In addition to managers directly awarding the awards listed above, an employee may nominate another employee or him or herself for time-off or special achievement awards.

Section 6. Awards Budget/Report

Consistent with all applicable laws, the Agency will provide to the Union's Principal Designee, on or before March 15 of each year, the following information on bargaining unit employees:

- A. A summary of awards by component and official duty station granted for the previous year, including the type of award, the amount of the award, and the employee's name.
- B. The annual budget of award distributions for the previous year.

Article 18: Equal Employment Opportunity

Section 1. Policy

- A. The Agency and the Union affirm their commitment to the policy of providing equal employment opportunity to all employees and to prohibit harassment and unlawful discrimination on the basis of race, color, religion, sex, national origin, disability, genetic information, or age. No employee shall be subject to retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act (Title VII) (42 U.S.C. § 2000 *et seq.*), the Age Discrimination in Employment Act (ADEA) (29 U.S.C. § 621 *et seq.*), the Rehabilitation Act (29 U.S.C. § 791 *et seq.*), the Americans with Disabilities Act Amendments Act (42 U.S.C. § 12101 *et seq.*), the Equal Pay Act (29 U.S.C. § 206(d)), Title II of the Genetic Information Nondiscrimination Act (GINA), or for participating in any stage of administrative or judicial proceedings under those statutes.
- B. In accordance with 29 C.F.R. Part 1614, Federal Sector Equal Employment Opportunity and the Agency's Equal Employment Opportunity policies, the Agency will maintain a continuing affirmative employment program to promote equal employment opportunity and to identify and eliminate discriminatory practices and policies.

Section 2. Equal Employment Opportunity Program

- A. Establishing, implementing, and monitoring of the Equal Employment Opportunity (EEO) Program is a fundamental Agency objective. The Agency will provide overall management and budgetary support to ensure the efficient and successful operation of the EEO Program throughout the Agency.
- B. The Agency agrees to maintain a work environment that ensures employees fair and impartial treatment in all employment actions, with a special consideration for the effect and not merely the intent of management decisions.
- C. Annually, the Agency shall provide the Union with the Agency's Federal Agency EEO Program Status Report (U.S. Equal Employment Opportunity Commission (EEOC) Form MD-715) which includes the Special Program Plan for the recruitment, hiring, and advancement of individuals with targeted disabilities.

Section 3. Notices

The Agency shall make available to employees written information describing the EEOC's Federal sector EEO complaint process. The names and telephone numbers of EEO Counselors will be posted electronically and on Agency bulletin boards and updated as necessary. The "No Fear Act Notice" will also be posted electronically on the intranet.

Section 4. Counselors

- A. The Parties agree that a sufficient number of trained EEO Counselors are necessary to properly administer the Federal sector EEO complaint process. EEO Counselors will be given training in accordance with EEOC regulations, Management Directives, and guidelines, and will be available and accessible to employees.

- B. The Union may submit nominees for EEO Counselor positions being filled on a collateral duty basis. The Office of Equal Opportunity and Civil Rights (OEOCR) will give consideration to Union nominees. Designated Union representatives may not be EEO Counselors.
- C. Union officials representing employees in EEO complaints of employment discrimination and for whom the complainant has submitted a written designation of representation to the Agency, will have access to copies of the EEO Counselor and investigative reports and the personnel records of the complainant, subject to applicable EEOC procedures, law, and Government-wide rule or regulation.

Section 5. EEO Complaints of Employment Discrimination

- A. Any employee who wishes to contact OEOCR to initiate an EEO complaint or has filed a complaint of employment discrimination will be free from reprisal and will be entitled to processing of the EEO complaint within the time limits prescribed by applicable EEOC regulation. Any employee who seeks to file an EEO complaint will have the right to select a representative in accordance with applicable EEOC regulations and any other applicable law and regulation.
- B. An employee has the option of filing a grievance under the negotiated grievance procedure (Article 24) or a formal complaint under the statutory EEOC Federal sector EEO complaint procedure, but not both. Should the employee elect to file a grievance under the negotiated grievance procedure, he/she does not have an automatic right to an arbitration hearing because only the Union can invoke arbitration.
- C. The Agency will maintain an Alternative Dispute Resolution (ADR) Program for EEO complaints and will make it available as required by EEOC regulations. The Parties recognize that ADR is a viable alternative that may not be appropriate in every situation.
- D. The Agency agrees to furnish the Union, upon request, the Annual Federal EEO Statistical Report of Discrimination Complaints (EEOC Form 462).
- E. When an employee files a complaint of employment discrimination under the regulatory procedure, he/she and the personal representative (if an employee of the Agency) will have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and to respond to Agency and EEOC requests for information, in accordance with EEOC regulations (29 C.F.R. Part 1614.605 and EEOC Management Directives). The complainant (if otherwise on duty) and his/her personal representative (if an Agency employee and otherwise in a duty status) will be on official time when their presence is authorized or required by the Agency or the EEOC during EEO counseling, ADR, the EEO investigation, and other times as required by EEO regulation, or a hearing on his/her complaint. It is the responsibility of the employee to request official time from the employee's supervisor in advance using the Agency Request for Approval to Use Official Time form. The form will be made available on the Agency's intranet.

Section 6. Upward Mobility

Upward mobility objectives will be considered in affirmative employment planning and will be consistent with the EEO program goals and objectives.

Section 7. Reasonable Accommodations for Employees with Disabilities

The Agency will provide reasonable accommodations for qualified individuals with disabilities in accordance with Federal law and government-wide rule and regulation, unless such accommodations impose an undue hardship upon the operations of the Agency's programs. Information for requesting reasonable accommodations will be posted on the Agency's intranet.

Article 19: Employee Assistance Program

Section 1. General Policy

The Agency agrees to operate and promote an Employee Assistance Program (EAP) that provides no cost, short-term counseling to assist employees with issues of a personal nature related to work and family. The program includes referral services for problems related to alcohol, drug abuse, personal/emotional, financial, marital, family, and legal matters. No employee will be required to use an EAP service unless this requirement is agreed to in writing as part of a mutually agreed upon settlement of a work-related matter.

Section 2. Procedures

The Agency will notify the Union of plans to formulate any new programs or of any changes in the existing programs. Union comments and recommendations will be considered. Prior to the implementation of any new programs or changes in the existing programs that affect working conditions, the Agency will give notice and, upon request, bargain with the Union, to the extent required by law.

Section 3. Assistance Availability

Employee assistance services will be made available to those employees who request them. The Agency agrees to assist employees by providing information and encouragement to use counseling services, as needed.

Should counseling appointments with an EAP Counselor require absence from duty, the employee will make the appropriate arrangements with his/her manager, including requesting duty time for counseling appointments. Such duty time will be approved except when there is an immediate or pressing operational need or requirement that would preclude its use at the requested time. Such duty time normally will not exceed eight hours for each issue for which the employee seeks EAP services (typically 1-6 counseling sessions) unless additional duty time is necessary for reasonable travel time to and from the counseling appointments.

The manager is encouraged to approve requests for leave for any employee undergoing a prescribed program of treatment as a result of an EAP referral.

Section 4. Confidentiality

Employee participation in, and information obtained through, EAP is confidential and may only be released with the consent of the employee or as provided by applicable Government-wide law, rule, or regulation.

Article 20: Child Care

Section 1. Local Initiatives

The Parties agree to cooperate with local GSA initiatives to establish or improve the availability of on-site child care for Agency employees.

Section 2. Orientation

During the orientation of new employees, the availability of any on-site child care center will be covered.

Section 3. Children in the Workplace

- A. It is generally inappropriate for employees to bring their children into the workplace because of the potential disruption to the accomplishment of work, concerns for safety, potential liability, and potential violations of internal security, including the use of Government equipment by non-employees.
- B. Exceptions may be granted in those limited instances when the Agency has granted a specific exception (e.g., holiday parties, national “bring your child to work” day). However, management may grant additional short-term specific exceptions when management determines the circumstances warrant.

Article 21: Performance Management and Appraisal Program

Section 1. Purpose and Authority

As an overarching policy, the Performance Management and Appraisal Program (PMAP) is designed to facilitate the execution of basic management and supervisory responsibilities and communicate or clarify organizational goals and objectives. The policies and procedures contained in this Article provide a mechanism for communicating organizational goals and expected outcomes, identifying individual and/or team accountability, providing formal feedback, and documenting individual and team performance. It is one component of the ongoing process of performance management, which also includes frequent informal feedback sessions, recognition and awards, coaching, skills development, and appropriate corrective action.

Authorities:

- 5 U.S.C. Chapter 43 and 5 C.F.R. Part 430 (Performance Management)
- 5 U.S.C. Chapter 45 and 5 C.F.R. Part 451 (Awards)
- 5 U.S.C. Chapter 5335 and 5 C.F.R. Part 531, Subpart D (Within-Grade Increases)
- 5 U.S.C. Chapter 5336 and 5 C.F.R. Part 531, Subpart E (Quality Step Increases)
- 5 U.S.C. Chapter 3502 and 5 C.F.R. Part 351.504 (Reduction-in-Force)
- 5 U.S.C. Chapter 552a; 5 C.F.R. Part 293.404 (Records of Employee Performance); and 5 C.F.R. Part 293.405
- 5 C.F.R. Part 432.104 (Unacceptable Performance)

Section 2. Coverage and Definitions

Coverage:

The PMAP covers all employees as defined in Article 1, Section 4 of this Agreement.

Definitions:

Appraisal – The process under which performance is reviewed and evaluated.

Appraisal Period – The established period of time for which an employee’s performance will be reviewed and a rating of record prepared. The appraisal period covers the calendar year (January 1 through December 31). The minimum appraisal period is 90 days. An employee must perform work under a performance plan in place for a minimum of 90 calendar days to receive a rating.

Critical Element – Work assignments or responsibilities of such importance that unacceptable performance in the element would result in a determination that an employee’s overall performance is unacceptable. All elements in the performance plan are critical.

Performance – An employee’s accomplishment of assigned work as specified in the critical elements of the employee’s position.

Performance Management Appraisal Program (PMAP) – The framework of Agency policies and parameters established for planning, monitoring, developing, evaluating, and rewarding

individual performance. The resulting performance information will be used in making personnel decisions.

Performance Award – A performance-based cash payment to an individual employee based on the employee’s rating of record.

Performance Award Budget – The amount of money allocated by the Agency for distribution as performance awards to covered employees.

Performance Plan – All of the written performance elements and standards that an employee is expected to accomplish during the appraisal period. These objectives are linked to specific program and management outcomes and are linked to the Agency’s Strategic Plan. These objectives are derived from the Agency/Component Head’s performance plan and are cascaded, as appropriate, to all employees. A performance plan must include all critical elements and their performance standards. No element should be included in an employee’s performance plan that is not an accurate reflection of the employee’s assigned work.

Performance Rating – The written appraisal of performance compared to the performance standards for each critical element in which there has been an opportunity to perform for the minimum period (i.e., 90 calendar days). A performance rating includes the assignment of a summary rating level.

Performance Standard – A statement of the performance threshold, requirement, or expectation for an element that must be met to be appraised at a particular level of performance. A performance standard may focus on, for example, factors such as quality, quantity, timeliness, and manner of performance.

Progress Review – Progress reviews are important for providing consistent performance feedback to employees and can be conducted at any time during the appraisal period. One formal progress review is required and is generally conducted midway through the appraisal period. Ratings are not assigned for progress reviews.

Rating Official – The official who is responsible for informing the employee of the critical elements of his/her position, establishing performance requirements, providing feedback, appraising performance, and assigning the summary rating. The rating official is ordinarily the employee’s immediate manager.

Rating of Record – The performance rating, which is prepared at the end of an appraisal period, for performance throughout the entire appraisal period. In most cases, a summary rating (see definition below) will become the rating of record.

Reviewing Official – An official having review and approval authority above the rating official. Reviewing officials are ordinarily at a level higher than the rating official.

Summary Rating – Combining the written appraisals of each critical element (on which there has been an opportunity to perform for the minimum period, i.e., 90 calendar days) in order to assign a summary rating level. The rating official derives the summary rating from appraising the employee’s performance during the appraisal period on each element.

Section 3. Performance Levels

The PMAP consists of five summary levels: Level 5: Achieved Outstanding Results (AO), Level 4: Achieved More than Expected Results (AM), Level 3: Achieved Expected Results (AE),

Level 2: Partially Achieved Expected Results (PA), and Level 1: Achieved Unsatisfactory Results (UR).

Level 5: Achieved Outstanding Results (AO)

Consistently superior; significantly exceeds Level 4 (AM) performance requirements. Despite major challenges, such as changing priorities, insufficient resources, unanticipated resource shortages, or externally driven parameters, employee leadership is a model of excellence. Contributions impact well beyond the employee's level of responsibility. They demonstrate exceptional initiative in achieving results critical to Agency success and strategic goals. Products and skills create significant changes in their area of responsibility and authority. Indicators of performance at this level include outcomes that consistently exceed the AM level standards for critical elements described in the annual performance plan. Examples include:

- Innovations, improvements, and contributions to management, administrative, technical, or other functional areas that have influence outside the work unit;
- Increases office and/or individual productivity;
- Improves customer, stakeholder, and/or employee satisfaction, resulting in positive evaluations, accolades, and recognition; methodology is modeled outside the organization;
- Easily adapts when responding to changing priorities, unanticipated resource shortages, or other obstacles;
- Initiates significant collaborations, alliances, and coalitions;
- Leads workgroups or teams, such as those that design or influence improvements in program policies, processes, or other key activities;
- Anticipates the need for, and identifies, professional developmental activities that prepare staff and/or oneself to meet future workforce challenges; and/or
- Consistently demonstrates the highest level of ethics, integrity, and accountability in achieving specific Agency or program goals; makes recommendations that clarify and influence improvements in ethics activities.

Level 4: Achieved More than Expected Results (AM)

Consistently exceeds expectations of Level 3 (AE) performance requirements. The employee continually demonstrates successful collaborations within the work environment, overcoming significant organizational challenges, such as coordination with external stakeholders or resource shortfalls. Employee works productively and strategically with others in non-routine matters, some of which may be complex and sensitive. The employee consistently demonstrates the highest level of integrity and accountability in achieving Agency program and management goals. Employee contributions have impact beyond their immediate level of responsibility. The employee meets all critical elements, as described in the annual performance plan. Examples include:

- Effectively plans, is well-organized, and completes work assignments that reflect requirements;

- Decisions and actions demonstrate organizational awareness. This includes knowledge of mission, function, policies, technologies systems, and culture;
- Independently follows-up on actions and improvements that impact the immediate work unit; establishes and maintains strong relationships with employees and/or clients; understands their priorities; balances their interests with organizational demands and requirements; effectively communicates necessary actions to them; and employee/customer satisfaction is conveyed; and/or
- When serving on teams and workgroups, contributes substantively and completely according to standards identified in the plan.

Level 3: Achieved Expected Results (AE)

Consistently meets performance requirements. Work is solid and dependable; customers are satisfied with program results. The employee successfully resolves operational challenges without higher-level intervention. The employee consistently demonstrates integrity and accountability in achieving Agency program and management goals. Employee conducts follow-up actions based on performance information available to him/her. Employee seizes opportunities to improve business results and include employee and customer perspectives.

Examples include:

- Acquires new skills and knowledge to meet assignment requirements;
- Demonstrates ethics, integrity and accountability to achieve Agency goals; and
- Resolves operational challenges and problems without assistance from higher-level staff.

Level 2: Partially Achieved Expected Results (PA)

Marginally acceptable; needs improvement; occasionally does not meet Level 3 (AE) performance requirements. The employee has difficulties in meeting expectations. Actions taken by the employee are sometimes inappropriate or marginally effective. They do not significantly contribute to any positive results achieved. This is the minimum level of acceptable performance for retention on the job. Improvement is necessary. Examples include:

- Occasionally fails to meet assigned deadlines;
- Work assignments occasionally require major revisions or often require minor revisions;
- Occasionally fails to adhere to required procedures, instructions, and/or formats on work assignments;
- Does not consistently apply technical knowledge to work assignments;
- Occasionally fails to adapt to changes in priorities, procedures, or program direction; and/or
- Impact on program performance, productivity, morale, organizational effectiveness, and/or customer satisfaction needs improvement.

Level 1: Achieved Unsatisfactory Results (UR)

Undeniably unacceptable performance; consistently does not meet Level 3 (AE) performance requirements. Repeat observations of performance indicate negative consequences in key outcomes (e.g., quality, timeliness, results, customer satisfaction, etc.) as described in the annual

performance plan. The employee fails to meet expectations. Immediate improvement is essential for job retention. Examples include:

- Consistently fails to meet assigned deadlines;
- Work assignments often require major revisions;
- Fails to apply adequate technical knowledge to completion of work assignments;
- Frequently fails to adhere to required procedures, instructions, and/or formats in completing work assignments; and/or
- Frequently fails to adapt to changes in priorities, procedures or program direction.

Section 4. Planning and Communicating Performance

- A. An individual employee performance plan is established annually for each employee. The performance plan will be used to document the employee's responsibilities.
- B. At the beginning of the appraisal period, the rating official will assure that the employee has a current position description, performance plan, and will initiate a dialogue with the employee to discuss the employee's duties and responsibilities in relation to the organizational unit's goals and the Agency's mission. The rating official and the employee will discuss the Agency's desired program and management outcomes, as well as the individual performance objectives toward which the employee should be focusing his/her efforts. The employee will be held accountable for his/her performance during the upcoming appraisal period. The discussion should also focus on the development of performance metrics that are quantifiable and results-based for each individual performance objective. Performance objectives should clearly define expectations and differentiate within performance levels. The performance metrics should define what is expected at the Achieved Expected Results Level and the Achieved Outstanding Results Level.

In developing the performance plan, the rating official will review and consider the Agency's Strategic Plan, objectives, and any other important goals and measures, such as those identified by customers/stakeholders. Each rating official will ensure that broad Agency goals have been explained and cascaded to subordinate staff throughout his/his portion of the organization. These cascaded goals will impact organizational activity as well as individual performance expectations.

- C. An employee's performance plan must accurately reflect the critical duties that he or she performs and each employee should actively participate in developing his/her performance plan for the appraisal period. The final authority for establishing the performance plan rests with the rating official. A performance plan must normally be provided to the employee within 30 days of the beginning of the appraisal period. When an employee enters a position during the appraisal cycle, a performance plan will normally be established within 30 days of the date the employee enters on duty in the new position. The system does not require a second level review of the performance plan. However, at the discretion of the organizational head, a second level review may be conducted. The rating official and the employee will sign and keep a copy of the performance plan.

A tip for establishing the performance plan is to use the term **SMART**:

- **Specific:** Goals and expectations are clearly stated and direct.
- **Measurable:** Outcomes are being achieved in comparison to a standard.
- **Attainable:** Goals or results/outcomes must be achievable and realistic.
- **Relevant:** Goals have a bearing on the overall direction of the organization, including the HHS Strategic Plan.
- **Timely:** Results are measured in terms of deadlines, due dates, schedules or cycles.

D. The Employee Performance Plan

The performance plan has two categories of critical elements: (1) Administrative Requirements; and (2) Individual Performance Outcomes, which include specific individual management and program outcomes that will contribute to the success of the Agency's Strategic Plan. The Administrative Requirements will constitute one critical element. Each outcome/result in the Performance Outcomes section will be a critical element. It is expected that there will be between three and five outcomes/results listed for each employee in the Performance Outcomes section.

1. Administrative Requirements

The Administrative Requirements critical element describes successful performance in responsibilities that are common to most employees. The areas listed below are among those covered by this critical element. Rating officials should determine which of these areas apply to each position under his/her supervision. Not every position will include responsibility for every one of these areas.

- a. Privacy Act Goal – Timely completion of all training requirements related to Privacy Act, Personally Identifiable Information (PII), Privacy Impact Assessments (PIA), Information Systems Security Awareness, and similar training obligations related to the access, use, and dissemination of work-related information. Compliance with all aspects of the Privacy Act and other relevant authorities when accepting, managing, using, and/or disseminating official or other sensitive information. Adherence to laws, rules, regulations, and policies, with respect to maintaining the confidentiality, data management, and safeguarding requirements related to Privacy Act, official, non-public, and personally identifiable information.
- b. Performance Management – Performance management includes the process by which an employee is involved in improving organizational effectiveness in the accomplishment of Agency mission and goals. For rating officials, performance management encompasses planning work and setting expectations, continually monitoring performance, developing the capacity to perform, periodically evaluating and/or rating performance, rewarding excellent performance, and addressing poor performance.
- c. Employee Development – Includes management and employee efforts to enhance individual or staff performance, as well as obtaining skills,

knowledge, and abilities for projected assignments and/or potential future career advancement.

- d. Workforce Activity – Includes planning, organizing, assigning, and/or performing work; adjusting to change; and participating in improvements leading to attainment of organizational goals.
- e. Customer Service – Includes responsiveness to customers as defined by Agency expectations and standards.
- f. Recovering Improper Payments – Applies only to staff having recovery responsibilities related to grants, procurement, and financial payments.

2. Individual Performance Outcomes

This critical element category identifies the key individual performance outcomes and specific end-results that contribute to the success of the Agency. These results-oriented outcomes should be consistent with strategic planning initiatives, such as the Agency Strategic Plan and program goals and objectives. Managers should limit the number of outcomes to the most important aspects of the employee's position, usually three to five.

- a. Performance plans must include one or more outcomes outlined in the Agency Strategic Plan. This cascade approach should ensure that performance plans for all employees support the organizational goals of the Agency. The “cascade” element should be identified in the following way under the appropriate outcome in the performance plan: “This element also relates to and supports objectives in the Agency Strategic Plan, specifically [cite the specific objective].”
- b. Each objective should include at least one accompanying metric that is quantifiable and results-based, and each metric should contain a specific target result to be achieved. Metrics should address significant program outcomes and improvements such as: enhanced quality of services and healthcare, new knowledge and insight from research, increased level of performance, and/or improvements in customer satisfaction. All objectives must be achievable by the end of the rating period. If numeric information on performance will not be available by the end of the rating period, it must be clear how success will be measured. Data sources for all metrics must exist currently or must be on schedule to be available in time to meet the reporting deadline. For metrics that are expressed as comparisons to past performance (e.g., “increase production by 10%”), baseline data must be available.
- c. These requirements must be aligned and directly contribute to the Agency's goals and priorities established by its Strategic Plan, Annual Plan, approved budget, and/or goals and objectives.

Section 5. Monitoring Performance

A. Progress Reviews

There should be continuous feedback between the employee and his/her rating official. At a minimum, one formal progress review will be held between the rating official and the employee at approximately midpoint in the rating cycle. If the performance is less than Achieved Expected Results in any element, the required formal progress review will be between the rating official and employee only. While only one progress review is required, additional reviews are encouraged to maximize employee feedback. Ratings are not assigned for progress reviews. A written narrative is required if performance in any element is less than Achieved Expected Results. Along with providing interim assessment of performance, this provides an opportunity for rating officials to discuss and document evolving priorities or other organizational changes impacting employee work assignments.

The rating official will:

1. Discuss, and as appropriate, document areas needing improvement;
2. Discuss with the employee and document any changes to performance goals that may be necessitated by such factors as new programmatic requirements, changes in resource levels, etc.;
3. When appropriate, obtain employee performance feedback from other Agency managers and staff. Examples may include: the employee was part of a workgroup headed by another Agency manager or staff lead, or the employee was on a rotational assignment or on a detail; and
4. Provide written documentation if performance on any element is less than Achieved Expected Results, including specific deficiencies and the steps needed to bring performance to Achieved Expected Results. This will include reference to unsuccessful efforts made during the performance period, if they occurred. (See Section 9 for required action if the employee's performance is determined to be Achieved Unsatisfactory Results.)

The rating official and the employee will sign and retain a copy of the progress review.

B. Employee Assistance for Less than Achieved Expected Results (AE) Performance

If an employee is rated below the Achieved Expected Results level on any element, the rating official will provide assistance. Assistance may include, but is not limited to, formal training, on-the-job training, counseling, mentoring, and closer supervision.

- C. If an employee's performance on any element becomes less than the Achieved Expected Results level at any time after the formal progress review, the rating official should discuss the concern with the employee and document the discussion in writing.

Section 6. Rating Performance at the End of the Appraisal Period

- A. At the conclusion of the appraisal cycle, the Agency will issue guidance and timelines for the completion of the annual employee evaluations and the submission of performance award nominations. Appraisal process guidance issued by the Agency will be consistent

with all policies, procedures, and requirements set forth in this Agreement and will not place limits on the number of ratings issued at any given level. The Agency appraisal process guidance will be communicated to all Agency staff.

- B. Performance ratings from a previous appraisal period do not carry over to the next appraisal period. Performance throughout the current rating cycle will determine a rating of record at the end of each appraisal period.
- C. Normally between January 1, and February 15, but no later than March 1 of each year, the rating official will meet with the employee to discuss the rating of record and, if applicable, any needed improvement assistance.
- D. Summary Rating

The rating official provides his/her own assessment of the employee's performance during the rating period under the written performance plan and requirements. The rating official rates each element performed for the minimum period (90 calendar days) unless the employee did not have a reasonable opportunity to perform a particular element for the minimum period. If the preceding is the case, the element will be marked "Not Applicable."

The rating official will meet with the employee for the purpose of discussing the summary rating. At this performance discussion, the rating official will present the appraisal form to the employee. The employee will be asked to sign and date the appraisal form. The employee's signature does not mean that the employee agrees with its content, only that the employee has received the rating. In those instances where the employee declines to sign the appraisal form, the rating official will date the form and indicate such in the appropriate section of the form. The employee will be provided a signed copy of the summary rating.

1. A written narrative may be prepared, but is not required, for Achieved Expected Results and Achieved More than Expected Results. However, a written narrative is required for Achieved Outstanding Results ratings in support of the rating of record.
 2. For ratings below Achieved Expected Results, the rating official must prepare a written assessment of an employee's overall performance. This should include identifying specific performance deficiencies.
 3. If an employee's performance is Achieved Unsatisfactory Results, the rating official must, at a minimum, give written notice to the employee of his/her failure to demonstrate acceptable performance. In addition, the rating official must give the employee an opportunity to demonstrate acceptable performance through the establishment of a Performance Improvement Plan (PIP).
- E. Method for Deriving Summary Ratings

Each employee's performance will be appraised by the rating official, at least annually, based on a comparison of actual performance with the written critical elements and standards in the employee's performance plan.

A rating will be assigned to each critical element (Administrative Requirements and the individual critical elements under the Individual Performance Outcomes). This rating will

be based upon the extent to which the employee's performance met one of the rating level definitions (Achieved Outstanding Results, Achieved More Than Expected Results, Achieved Expected Results, Partially Achieved Expected Results, and Achieved Unsatisfactory Results).

The rating level definitions will be assigned a numerical score as follows:

<u>Critical Element Ratings</u>	<u>Points Assigned</u>
Level 5: Achieved Outstanding Results (AO)	5.00
Level 4: Achieved More than Expected Results (AM)	4.00
Level 3: Achieved Expected Results (AE)	3.00
Level 2: Partially Achieved Expected Results (PA)	2.00
Level 1: Achieved Unsatisfactory Results (UR)	1.00

After rating and assigning a score to each critical element, the rating official will total the points and divide by the number of critical elements, to arrive at an average score. This score will be converted to a summary rating using the following point values:

<u>Summary Ratings</u>	<u>Points Assigned</u>
Level 5: Achieved Outstanding Results (AO)	4.50 to 5.00
Level 4: Achieved More than Expected Results (AM)	3.60 to 4.49
Level 3: Achieved Expected Results (AE)	3.00 to 3.59
Level 2: Partially Achieved Expected Results (PA)	2.00 to 2.99
Level 1: Achieved Unsatisfactory Results (UR)	1.00 to 1.99

Exceptions to the mathematical formula:

If an employee receives a Partially Achieved Expected Results rating on one or more critical elements, he/she cannot receive a summary rating of higher than Achieved Expected Results, regardless of the average point score. A summary rating of Achieved Unsatisfactory Results must be assigned to any employee who is rated Achieved Unsatisfactory on any critical element.

F. Rating of Record

A summary rating prepared at the end of the appraisal period becomes the rating of record. A summary rating may also be prepared prior to the end of the appraisal cycle (e.g., when the employee is reassigned, transferred, promoted, etc., or if the employee resigns or the manager leaves his/her position, etc.) and will be considered by the rating official or new rating official in preparing an end-of-the-cycle rating of record. If there are less than 90 days prior to the end of the appraisal cycle, this summary rating will become the rating of record. When appropriate, and upon request from the employee, a copy of the summary rating will be provided to the employee before they separate from the Agency.

G. Extending the Appraisal Period

If an employee has performed for more than 45 days, but less than 90 days prior to the end of the appraisal cycle, the rating period will be extended. For example, if a performance plan is established for an employee on November 1, there would be more than 45 days left in the appraisal cycle, which ends on December 31. In this case, the appraisal period would be extended until January 31, to allow for a full 90-day appraisal period on which to base the appraisal.

The rating period will not be extended if the employee has performed less than 45 days under a performance plan prior to the end of the appraisal cycle. For example, if a performance plan is established after November 15, there would be less than 45 days prior to the end of the appraisal cycle, December 31. In this case, the employee will not receive a rating for that cycle.

H. Disagreement with the Rating

Employees are encouraged to discuss disagreements with the rating official in an attempt to resolve the issue informally. If the employee disagrees with the rating of record, the rating official must advise the employee of the right to respond in writing to the rating. This response will be attached to the rating form for informational purposes only and does not change the rating of record. An employee may file a grievance, as provided for under Article 24 of the Agreement. An employee may also pursue EEO complaint procedures if he/she believes the rating is based on prohibited discrimination. An employee has the option of requesting a second level review by their reviewing official. The reviewing official may make a recommendation to the rating official to change or modify the employee's rating levels; however, the final determination rests with the rating official.

Section 7. Using Performance Results

A. Impact of Performance Outcomes and Results

Successful individual employee accomplishments and contributions enable organizations to meet their goals. These achievements will be considered when determining and assigning final ratings, conferring recognition and rewards, identifying potential training needs, and planning future assignments.

B. Actions Based on Achieved Outstanding Results, Achieved More than Expected Results, or Achieved Expected Results Performance

Performance awards are an integral part of the performance appraisal process. As such, they are linked to the rating of record and submitted and considered for approval only at the conclusion of the rating period. (See Article 17) Employees receiving an Achieved Outstanding Results rating are also eligible for a Quality Step Increase (QSI). However, employees will not receive both a QSI and a cash award for the same performance.

C. Actions Based on Partially Achieved Expected Results Performance

The Partially Achieved Expected Results level describes performance that is adequate for retention in the position. Rating officials are strongly encouraged to closely monitor an employee who is rated Partially Achieved Expected Results and to offer any assistance needed to bring the employee's performance to the Achieved Expected Results Level. Employees who receive a Partially Achieved Expected Results rating are not eligible to receive within-grade increases or performance awards. Rating officials should consult with the servicing Labor and Employee Relations Office for assistance as soon as an employee's performance falls to the Partially Achieved Expected Results level.

D. Actions Based on Achieved Unsatisfactory Results Performance

If performance in any critical element is determined to be Achieved Unsatisfactory Results at any time during the rating period, the rating official will provide assistance to help the employee improve performance to an acceptable (Partially Achieved Expected Results) level. The rating official must, at a minimum, give written notice to the employee of his or her failure to demonstrate acceptable performance and give the employee an opportunity to demonstrate acceptable performance under a Performance Improvement Plan (PIP). The rating official will meet with the employee to advise the employee of the problem, determine the root cause, and develop a written PIP to help the employee resolve the performance problem. This written notification must include:

1. The specific element(s) on which the employee's performance is determined to be Achieved Unsatisfactory Results, including specific examples of how the employee's performance fails to meet the level of performance;
2. The performance requirement(s) that must be met;
3. The specific assistance that will be provided to help the employee improve performance. The assistance will be tailored to the specific needs of the employee and may include formal training, on-the-job training, counseling, assignment of a journeyman mentor, or other assistance as appropriate. The Parties agree that placing the employee on 100% review does not equate to appropriate assistance;
4. The specific period of time that the employee will be given to demonstrate acceptable performance. This time period will be a minimum of 60 calendar days, unless the employee demonstrates acceptable performance prior to the 60 days, and then not more than 90 days;
5. During the PIP period, rating officials should counsel their employees noting where improvement has and has not been made at least every two weeks. Notes of counseling sessions should be maintained and should include the date, nature of

assistance given, and how the employee is progressing. A copy of these notes will be given to the employee; and

6. Notification that actions may be initiated to reduce in grade or remove the employee if performance does not improve to the Partially Achieved Expected Results level.

At any time during the PIP period, the rating official may conclude that the employee's performance has improved to the Partially Achieved Expected Results level and the PIP can be terminated. In that event, the rating official will notify the employee of this determination in writing.

Section 8. Training

Information will be provided to employees on key aspects of the performance management process. Rating officials are expected to explain the system to subordinate employees in a manner that should enable them to understand the specific aspects of their performance plan and the rating official's performance expectations.

Section 9. Performance-Based Actions (Under 5 U.S.C. § 4303 and 5 C.F.R. Part 432)

- A. Should all remedial action fail and the employee's performance is determined to be unsatisfactory, the rating official will issue an appraisal of Achieved Unsatisfactory Results to the employee. One of the following actions will be taken: reduction to the next lower appropriate grade or removal.
- B. An employee who is demoted to a position at a lower grade will be issued a performance appraisal 90 calendar days after assignment to the new position.
- C. An employee whose reduction in grade or removal is proposed for unsatisfactory performance is entitled to:
 1. 30 calendar days advance written notice of the proposed action that identifies the specific basis for the proposed action, including specific instances of unsatisfactory performance;
 2. A representative. The employee must inform the deciding official, in writing, of the representative's name; and
 3. A reasonable time, not to exceed 20 calendar days, to answer orally and in writing.

The decision to retain, reduce in grade, or remove an employee will be made within 30 calendar days after the date of expiration of the notice period.

- D. The employee will be given a written decision that:
 1. Specifies directly, or by reference, the instances of unsatisfactory performance on which the decision is based;
 2. Unless proposed by the head of Agency, has been concurred with by an employee who is in a higher position than the person who proposed the action; and

3. Specifies the effective date, the action to be taken, and the employee's right to appeal the decision.
- E. In accordance with 5 U.S.C. § 7121, an employee, at his/her option, may raise matters covered under 5 U.S.C. § 4303 under either the appellate procedures of 5 U.S.C. § 7701 (Merit Systems Protection Board) or the negotiated grievance procedure in Article 24, but not both.
1. If the employee wishes to utilize the appellate procedures, he or she has 30 days from the effective date of the Agency's final decision to appeal to the Merit Systems Protection Board.
 2. If the employee wishes to proceed under the negotiated grievance procedure in Article 24, he or she will have 10 working days from receipt of the Agency's final decision to file a grievance. For purposes of processing, the Agency's final decision will be treated as the step 1 grievance decision. If the employee wishes to file a grievance, such grievance must be submitted to the designated step 2 official within 10 working days of receipt of the final decision.
 3. An employee shall be deemed to have exercised his/her option to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or the employee timely files a grievance in writing, in accordance with Article 24, whichever event occurs first.

Section 10. Recordkeeping and Use

As part of monitoring performance, rating officials may make notes on significant instances of performance so that the instances will not be forgotten. Such notes are not required by, and will not be under the control of, the Agency. Such notes are not subject to the Privacy Act as long as they remain solely for the personal use of the rating official, are not provided to any other person, are not used for any other purposes, and are retained or discarded at the rating official's sole discretion.

The retention, maintenance, accessibility, and disposal of performance records, as well as rating officials' copies, will be in accordance with Office of Personnel Management regulations. Performance records must be retained for five years and transferred with the employee's Official Personnel Folder when the employee transfers to a new organization in HHS or to another agency.

Section 11. Performance Management Initiatives

In the event of changes to the performance management system, in accordance with Presidential Executive Order 13781, "Comprehensive Plan for Reorganizing the Executive Branch," dated March 13, 2017, and the Office of Management and Budget memorandum on Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce (M-17-22), the Agency will provide notice and, upon request, bargain with the Union in accordance with Article 4 of this Agreement and to the extent required by law.

Article 22: Within-Grade Increases

Section 1. Guides for Acceptable Level of Competence

The following guides will be used within the Agency in determining acceptable level of competence for purposes of within-grade increases (WGI).

- A. An employee is considered to have attained an acceptable level of competence when their performance is at the Achieved Expected Results level.
- B. Denial of a WGI is not to be used as a punitive measure or for an act of misconduct in lieu of appropriate disciplinary actions.
- C. A notice of a proposed adverse/disciplinary action (non-performance related) is not a bar against a favorable determination of an acceptable level of competence for a WGI.

Section 2. Within-Grade Increases

- A. The determination to grant or withhold a WGI will be based on the employee's appraisal of record and his/her current performance under a performance plan for 90 days or more. (Refer to Article 21 for performance appraisal.)
- B. In accordance with 5 C.F.R. Part 531.404, the WGI will be granted as soon as the employee is eligible and has met an acceptable level of competence.

Section 3. Procedures for WGI Determinations

- A. Where an employee has been assigned to his/her current rating official for less than 90 days, and that rating official cannot adequately assess the employee's performance, he/she will secure the written views of the employee's prior rating official before making a performance determination. The prior rating official's views will be entered in the employee's Supervisory Working File.
- B. Except in rare and unusual circumstances, the WGI will be granted as soon as the employee is eligible unless the employee was informed, not later than the end of the statutory waiting period for eligibility for a WGI, that his/her performance is below an acceptable level of competence.
- C. A WGI may be delayed in accordance with the provisions of 5 C.F.R. Part 531.409(c)(i) and (ii) for the following reasons:
 - 1. An employee has not had the minimum period of time (90 days) to demonstrate acceptable performance because he or she has not been informed of the specific requirements for performance at an acceptable level of competence in his or her current position, and the employee has not been given a performance rating in any position within the minimum period of time (90 days) before the end of the waiting period for the WGI; or
 - 2. An employee is reduced in grade because of unacceptable performance.
 - 3. If a WGI is delayed under this Section, the employee will be informed in writing that his or her determination is postponed and the appraisal period extended until such time as the employee has performed in his or her current position under a

performance plan that has been in place for 90 days. The employee will be informed of the specific requirements for performance at an acceptable level of competence.

4. An acceptable level of competence determination will be made based on the employee's rating of record completed at the end of the extended appraisal period.
 5. If, following the delay, the employee's performance is determined to be at an acceptable level of competence, the WGI will be granted retroactively to the beginning of the pay period following completion of the applicable waiting period.
 6. If, following the delay, the employee's performance is determined not to be at an acceptable level of competence and the WGI is denied, the employee will be informed of the determination in accordance with the procedures contained in paragraphs D. and E. of this Section.
- D. If the WGI is denied, the employee has the right to request reconsideration of the denial in accordance with the procedures provided in paragraph E. of this Section.
- E. If a rating official has determined that an employee's performance is not at an acceptable level of competence for the purpose of approving the WGI, the employee will be given a written notice of denial of the WGI that will include:
1. An indication that the employee's work has been reviewed;
 2. A statement that the employee's work has been determined to be of a less than an acceptable level of competence;
 3. An identification of those elements where the employee's performance has resulted in denial of the WGI;
 4. A statement that the employee has a right to request, in writing, a reconsideration of the negative determination, provided the request is made within 15 days of the employee's receipt of the negative determination;
 5. The name of the reconsideration official to whom the employee may submit a request;
 6. A statement that the employee may have a Union-approved representative of his/her choosing in presenting a request to the reconsideration official;
 7. A statement that the employee may appeal the basis for the negative determination in person and/or in writing; and
 8. An explanation that the employee may be considered for a WGI at any time during the next 26 calendar weeks if the employee demonstrates an acceptable level of competence.
 9. When a WGI decision is not consistent with the employee's most recent rating of record, a more current rating of record must be prepared. For purposes of this Section, "rating of record" is synonymous with summary rating.

Section 4. Appeals

The Parties agree that the employee may appeal the reconsideration decision to step 2 of the negotiated grievance procedure prior to arbitration as set forth in Article 24 of this Agreement.

Section 5. Redetermination

After a WGI has been withheld, the Agency may grant the WGI at any time after it determines that the employee has demonstrated sustained performance at an acceptable level of competence. In such cases, the WGI will be effective the first day of the first pay period after the acceptable determination is made.

A new determination will be made no less than every 26 weeks following the date the WGI was due or the date of the final disposition of the negative WGI decision, whichever is later. If the new determination is negative, the employee is entitled to a notice of negative determination and the right to reconsideration. If the negative redetermination is sustained upon reconsideration, the notice will inform the employee of his/her right to grieve the decision under the negotiated grievance procedure under Article 24 of this Agreement.

Article 23: Disciplinary and Adverse Actions

Section 1. Purpose and General Policies

- A. Disciplinary actions are defined as reprimands and short-term suspensions (up to 14 days). Adverse actions are defined as suspensions of more than 14 days, removals, furloughs without pay for 30 days or less, or reductions in pay or grade.
- B. Disciplinary and adverse actions will be taken for just and sufficient cause and will be effectuated in accordance with applicable laws, Government-wide rule or regulation, and this Article. In case of off-duty misconduct, disciplinary or adverse actions will only be taken if there is a nexus between the employee's misconduct and the employee's position. Disciplinary or adverse actions will be initiated timely after the offense is committed or made known to the Agency.
- C. Discussions involving disciplinary or adverse actions will be conducted privately and in such a manner as to avoid embarrassment to the affected employee. The Agency will protect the privacy of the employee against whom a disciplinary or adverse action is taken. Consistent with Article 3, Section 15 of this Agreement, observation or complaint regarding an employee's conduct will be brought to her/his attention as soon as practicable after the event.
- D. If requested, the Agency will make available for review copies of all the material relied upon to support the proposed action concurrent with the proposal notice being delivered to the employee. If requested by the employee or his/her authorized representative, the Agency will furnish copies of such material relied upon prior to the reply. Where the Agency has relied upon witnesses to support the reasons for the proposed action, it will make available their identity and any written statements taken. The material relied upon will include all evidence that has been considered in determining the disciplinary or adverse action (including the severity of the proposed action) taken by the Agency.
- E. In effecting disciplinary or adverse actions, the Agency endorses the concepts of like penalties for like offenses and progressive discipline. However, mere surface consistency is to be avoided and the Agency should give due regard to the existence of any mitigating/aggravating circumstances, the nature of the position occupied by the employee involved, and any other factors bearing upon the incidents or acts involved. The degree of discipline administered should be proportionate to the offense and on a case-by-case basis.
- F. When determining appropriate disciplinary and/or adverse actions, the Agency will consider not only the nature and seriousness of the offense, but other factors such as the Douglas factors and applicable case law.
- G. Records of disciplinary or adverse actions will be purged from the Supervisory Working File in a timely manner. Purged records that are not otherwise in the employee's electronic Official Personnel Folder (eOPF) may not be relied upon or referred to in subsequent actions.
- H. The Union and the Agency may mutually agree to extensions of any time frames stated within this Article. The Agency will not unreasonably deny a request for extension of the

time to respond to proposals. If the employee response is not timely filed and an extension is not granted, the Agency may issue its final decision.

- I. The Agency will provide the Union with a copy of any proposed disciplinary or adverse action within three work days of the issuance. One sanitized copy of the proposed action will be provided to the Union when the Union is not representing the employee.
- J. An employee will be given reasonable time to prepare and present a reply or appeal to a covered action. CMS employees who appear as witnesses at any step in these procedures will be in duty status.
- K. An employee who is temporarily promoted or reassigned to a management position for 120 days or less is prohibited from improperly disclosing, verbally or in writing, any information referenced in Article 3, Sections 3 and 4 of this Agreement. This prohibition remains in effect after the conclusion of the promotion or reassignment.

Section 2. Counseling and Warnings

- A. Discipline may be preceded by oral warnings or written counseling.
- B. Warnings and counseling are not in themselves disciplinary or adverse actions; however, such actions may be considered when determining appropriate discipline should the employee engage in future misconduct.
- C. Warnings and counseling will be conducted privately and in such a manner so as to avoid embarrassment to the employee. This principle will guide the Agency's decision as to who will attend such meetings.
- D. The employee should be advised that disciplinary or adverse action may result if he/she fails to comply with work or conduct rules.

Section 3. Reprimands and Short-term Suspensions

- A. Reprimand
 - 1. Definition – A reprimand is a written disciplinary action. A copy of the reprimand will be made a part of an employee's Official Personnel Folder (OPF) for up to two years, but may be removed after one year if the Agency determines that the purpose of discipline has been served.
 - 2. Procedures – Once issued, the reprimand constitutes a final Agency decision and may be grieved through the negotiated grievance procedure in Article 24. For purposes of processing, the reprimand will be treated as the step 1 grievance decision. If the employee wishes to file a grievance, such grievance must be submitted to the designated step 2 official within 10 working days of receipt of the reprimand.
- B. Short-term Suspension
 - 1. Definition – A short-term suspension is the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay for 14 days or less.

2. Procedures

- a. An employee will receive an advanced written notice stating the specific reasons for the proposed action and notice of his or her right to a representative.
- b. The employee is responsible for bearing any and all costs of representation if the representative is other than the exclusive representative (Union). The employee and/or representative has the right to respond to the notice of proposed action orally, in writing, or both.
- c. A request to make an oral presentation must be made to the designated deciding official within five working days of receipt of the notice of the proposed action. Any written response to the proposed action must be submitted no later than the oral presentation.
- d. If an employee and/or representative decide to waive the oral presentation and only provide a written response, the written response must be received within 10 working days of receipt of the notice of proposed action.
- e. The designated deciding official will issue a written decision to the employee, with a copy to the employee's designated representative, if the employee is represented. This decision will be issued within 10 working days of the receipt of the employee's written response or oral presentation, whichever is later. If no written response or oral presentation is made, the written decision will be issued within 10 working days of the expiration of the 10-day period to respond.
- f. This written decision will constitute the Agency's final decision on the short-term suspension and may be grieved through the negotiated grievance procedure in Article 24. For purposes of processing, the Agency's final decision will be treated as the step 1 grievance decision. If the employee wishes to file a grievance, such grievance must be submitted to the designated step 2 official within 10 working days of receipt of the final decision on the short-term suspension.

Section 4. Suspensions of More than 14 Days, Removals, Furloughs Without Pay for 30 Days or Less, and Reductions in Pay or Grade

A. Procedures

1. An employee against whom a suspension of more than 14 days, a removal, furlough without pay for 30 days or less, or reduction in pay or grade is proposed is entitled to a 30-day advance written notice (prior to the final decision referenced in Section 4.A.5. below) stating the specific reasons for the proposed action and the right to a representative. However, this 30-day notice may be waived if there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed.
2. The employee is responsible for bearing any and all costs of representation if the representative is other than the exclusive representative (Union). The employee

and/or representative has the right to respond to the notice of proposed action orally, in writing, or both.

3. A request to make an oral presentation must be made to the designated deciding official within five working days of receipt of the notice of the proposed action. Any written response to the proposed action must be submitted no later than the oral presentation.
4. If an employee and/or representative decide to waive the oral presentation and only provide a written response, the written response must be received within 10 working days of receipt of the notice of the proposed action.
5. The designated deciding official will issue a written decision to the employee, with a copy to the employee's designated representative, if the employee is represented. This decision will be issued within 10 working days of the receipt of the employee's written response or oral presentation, whichever is later, but no earlier than the 30 day advance notice period. If no written response or oral presentation is made, the written decision will be issued no earlier than the 30 day advance notice period.
6. If the Agency has issued a proposal to remove the employee, the employee may choose voluntary resignation at any time prior to the issuance of the Agency's final decision on the proposed removal. If the employee voluntarily resigns and waives all applicable appeal rights, and the Agency agrees to such, the employee's eOPF will reflect that the employee resigned for personal reasons and will not contain an Agency comment or finding regarding the proposed removal.
7. This written decision will constitute the Agency's final decision on the action.

B. Right to Appeal Decision

1. In accordance with 5 U.S.C. § 7121, an employee, at his/her option, may raise matters covered under 5 U.S.C. § 7512 (suspensions of more than 14 days, removals, furloughs without pay for 30 days or less, or reductions in pay or grade) under either the appellate procedures of 5 U.S.C. § 7701 (Merit Systems Protection Board) or the negotiated grievance procedure in Article 24, but not both.
2. If the employee wishes to utilize the appellate procedures, he or she has 30 days from the effective date of the Agency's final decision to appeal to the Merit Systems Protection Board.
3. If the employee wishes to proceed under the negotiated grievance procedure in Article 24, he or she will have 10 working days from receipt of the Agency's final decision to file a grievance. For purposes of processing, the Agency's final decision will be treated as the step 1 grievance decision. If the employee wishes to file a grievance, such grievance must be submitted to the designated step 2 official within 10 working days of receipt of the final decision.
4. An employee shall be deemed to have exercised his/her option to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the

applicable appellate procedures or the employee timely files a grievance in writing in accordance with Article 24, whichever event occurs first.

Section 5. EEO Options

If an employee's appeal of a disciplinary/adverse action is based, in whole or in part, on an allegation(s) of discrimination, the employee may file an Equal Employment Opportunity (EEO) complaint in accordance with the provisions of Article 18, Section 5 of this Agreement.

Article 24: Grievance Procedure

Section 1. Purpose

- A. The purpose of this Article is to provide a mutually acceptable method for the prompt settlement of grievances filed by employees or the Parties.
- B. The Parties earnestly desire that these grievances and complaints should be settled in an orderly and prompt manner so that the efficiency of the Agency may be maintained and morale of employees will not be impaired. Every effort will be made by the Parties to settle grievances at the lowest possible level of the grievance procedure. Employees and their representatives will be unimpeded and free from restraint, interference, coercion, discrimination, or reprisal in seeking adjustment of grievances.

Section 2. Scope

A grievance, as defined by 5 U.S.C. § 7103(a)(9), means any complaint:

- A. By an employee concerning any matter relating to the employment of the employee;
- B. By the Union concerning any matter relating to the employment of the employee; or
- C. By an employee, the Union, or the Agency concerning:
 - 1. The effect or interpretation or a claim of breach of the collective bargaining agreement; or
 - 2. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.
- D. In accordance with 5 U.S.C. § 7121(c), the negotiated grievance procedures contained in this Article do not cover:
 - 1. Any claimed violation relating to prohibited political activities;
 - 2. Any complaint concerning retirement, life insurance, or health insurance;
 - 3. Any suspension or removal for national security reasons;
 - 4. Any examination, certification, or appointment; and
 - 5. The classification of any position that does not result in the reduction in grade or pay of any employee.

Also excluded from the grievance procedure:

- 6. A notice of proposed action;
- 7. Non-selection from among a group of properly ranked and certified candidates;
- 8. An action terminating a temporary/probationary employee; and
- 9. Any other matter otherwise excluded by law.

Section 3. General Provisions

- A. This negotiated procedure will be the exclusive procedure available to the Union, the Agency, and employees for resolving grievances.
- B. An employee processing a grievance under this Article will be limited to a Union representative or self-representation. When not representing employees in a grievance, the Union will have the right to observe formal discussions (e.g., settlement meetings) during all steps of the negotiated grievance procedure. In its capacity as an observer, the Union agrees to respect confidentiality of all information obtained.
- C. In accordance with 5 U.S.C. § 7121, an employee, at his/her option, may raise matters covered under 5 U.S.C. § 4303 (unacceptable performance) and 5 U.S.C. § 7512 (suspensions of more than 14 days, removals, furloughs without pay for 30 days or less, or reductions in pay or grade) under either the appellate procedures of 5 U.S.C. § 7701 or the negotiated grievance procedure in this Article, but not both. An employee shall be deemed to have exercised his/her option to raise a matter under either the applicable appellate procedures or the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or the employee timely files a grievance in writing in accordance with this Article, whichever event occurs first.
- D. An employee affected by a prohibited personnel practice or discrimination may raise the matter under a statutory procedure or the negotiated grievance procedure, but not both. An employee will be deemed to have exercised his/her option at such time as he/she timely files a grievance in writing or initiates an action under the applicable procedure.
- E. An employee who is temporarily promoted or reassigned to a management position for 120 days or less is prohibited from improperly disclosing, verbally or in writing, any information referenced in Article 3, Sections 3 and 4 of this Agreement. This prohibition remains in effect after the conclusion of the subject promotion or reassignment.

Section 4. Question of Grievability/Arbitrability

In the event that either Party should declare a grievance non-grievable or non-arbitrable during the grievance procedure, the disputes of grievability or arbitrability will be referred to arbitration as a threshold issue in the related grievance. The Party raising the grievability/ arbitrability question will provide an adequate explanation of the issue at the earliest time possible during the grievance procedure unless it occurred or the Party became aware of the issue after the final grievance decision. In that case, the party making the allegation must notify the other Party, by the end of the business day on which they became aware of the issue in writing accompanied with documentary evidence, if applicable, and cite the specific basis for the allegation.

Section 5. Processing Procedures for Employee Grievances

- A. Step 1
 - 1. A written grievance must be submitted to the immediate manager within 20 working days of the date of the incident/event that gave rise to the grievance or of the date the employee became aware or should have become aware of the

occurrence of the incident/event. A grievance concerning a continuing practice or condition may be presented at any time. All grievances will be in writing and be submitted on the CMS Standard Grievance Form by the grievant or his/her designated Union representative. The grievance information should include the date filed, the name of the grievant and his/her representative, if any, and signature of the grievant or his/her representative, the work location, and sufficient detail to identify the basis of the grievance, including the specific Article and section of the Agreement, and general reference to any practice, law, rule, or regulation alleged to be violated, misinterpreted, or misapplied and any alleged facts and the specific relief the employee seeks.

2. Upon request, the designated step 1 official will hold a meeting to hear the grievant's or representative's oral presentation. The designated step 1 official will, within 10 working days of the oral presentation, issue a written decision to the employee's designated representative, or to the employee if he or she is self-represented. If no oral presentation was requested, the designated step 1 official will issue the written decision within 10 working days of the date the grievance was received by the immediate manager.
3. If dissatisfied with the step 1 decision, the grievant/representative will have 10 working days from the date of receipt of the decision to ask for a review at step 2. The designated step 2 officials will be identified in the step 1 decision and will be at least one organizational level higher than the step 1 official.

B. Step 2

1. Upon request, the designated step 2 official will hold a meeting to hear the grievant's or representative's oral presentation. The designated step 2 official will, within 10 working days of the oral presentation, issue a written decision to the employee's designated representative, or to the employee if he or she is self-represented. If no oral presentation was requested, the designated step 2 official will issue the written decision within 10 working days of his or her receipt of the grievance.
2. The step 2 decision will constitute the final Agency grievance decision. If the decision is not acceptable to the employee or the Union, the Union may refer it to arbitration in accordance with Article 25 of this Agreement.

- C. Failure on the part of the Agency to observe the time limits for any step in the grievance procedure shall have the effect of the grievance being denied at that step, at which point the grievant may appeal to the next step. Failure on the part of the grievant or the Union to observe time limits for any step shall have the effect of the grievance being nullified and not capable of being processed further.

Section 6. Duty Time and Witnesses

An employee will be afforded reasonable duty time to prepare for discussions and to present a grievance under this Article. CMS employees who appear as witnesses at any step in these procedures will be in duty status.

Section 7. EEO Options

- A. Before filing a grievance that alleges discrimination, the employee may first discuss the allegation with an EEO Counselor. If an employee chooses to discuss the matter with an EEO Counselor, this discussion must be within 45 days after the event causing the allegation or within 45 days of the date the employee became aware of the event. Failure to contact an EEO Counselor within 45 days as described above may result in a loss of EEO rights. If the individual enters the EEO informal complaint process, the Counselor will have 30 days to resolve the matter informally, unless the individual elects EEO Alternative Dispute Resolution (ADR) or authorizes a written extension, wherein the Counselor will have 90 days to resolve the matter informally. (See Article 18.) If the matter is not resolved, OEOCR will issue the employee a **Notice of Right to File (NRTF) a Formal EEO Complaint**, which is a written notice stating his/her right to file either a formal EEO complaint under the regulatory EEO procedure or a grievance under this Article. This notice will clearly inform the employee that if he/she elects to file a grievance under the negotiated grievance procedure, he/she does not have an automatic right to an arbitration hearing because only the Union can invoke arbitration. Therefore, the employee will be advised to consult with the Union before making his/her decision to file a grievance.
- B. If the employee elects to file under the negotiated grievance procedure, he/she will proceed under Section 5 of this Article by filing a timely written grievance within 20 working days of the date of the employee's receipt of the NRTF. The employee must attach a copy of the NRTF to the grievance. An employee who files a grievance may not thereafter file a formal EEO complaint on the same matter.
- C. If an employee elects to file a formal complaint under the EEO process, he/she may not thereafter file a grievance under this Article on the same matter.

Section 8. Procedures for Union/Management Grievances

- A. A grievance on behalf of the Union or the Agency will be submitted in writing to the Agency's Labor Relations Officer (or designee) or the Union president (or designee), respectively. The grievance must be filed within 20 working days from the date of the incident or event that gave rise to the grievance or within 20 working days from the date that the filing Party became aware or should have become aware of such incident or event.
- B. Upon receipt of a Union/Management grievance, the Agency's Labor Relations Officer (or designee) and the Union president (or designee) will, within 10 working days, meet to attempt resolution.
- C. If, after the meeting, the grievance is unresolved, arbitration must be invoked no later than 20 working days after the date of the meeting to attempt resolution. If the Parties do not meet to attempt resolution within 10 working days, the grievant must invoke arbitration no later than 30 days from the date the grievance was filed.

- D. Any grievability/arbitrability issues must be raised no later than 30 days after the date the grievance was filed, or if an issue arises after 30 days, within 10 days of when the issue arose.
- E. Union/Management grievances shall not be used to file a grievance on behalf of an individual employee or combine unrelated individual grievances.

Article 25: Arbitration

Section 1. General Provisions

- A. A grievance processed under Article 24 of this Agreement may be referred to arbitration if it is unresolved. Employee grievances shall be referred no later than 20 working days after receipt of the final Agency grievance decision. Union/Management grievances shall be referred no later than 20 working days after the date of the meeting to attempt resolution or, if the Parties do not meet to attempt resolution, no later than 30 days from the date the grievance was filed.
- B. Arbitration may only be invoked by the Union or Agency. Invocation for arbitration will be filed with the Agency Labor Relations Officer (employee or Union grievance) or the Union president (Management grievance).

Section 2. Selection of Arbitrator

Within five working days from the date of the request for arbitration, the Parties will jointly or separately request the Federal Mediation and Conciliation Service (hereinafter called FMCS) to provide a list of five impartial persons to act as arbitrators from the appropriate geographical area. The Parties will meet within five working days after receipt of such a list. If they cannot mutually agree upon one of the listed arbitrators, then the Agency and the Union will each strike one arbitrator's name from the list of five and will then repeat this procedure. The remaining person will be the duly selected arbitrator. The Parties will make a good faith effort to schedule arbitration within 60 days following the selection of the arbitrator.

Section 3. Prehearing Conference

By mutual agreement, the Parties may arrange for a prehearing conference, with or without the arbitrator, to consider possible settlement and means of expediting the hearing. For example, this can be done by reducing the issue(s) in writing, stipulating facts, outlining intended offers of proof, authenticating proposed exhibits, exchanging lists of witnesses, or waiving the use of a transcript.

Section 4. Arbitration Procedures

- A. The arbitrator's fees and all expenses will be shared equally by the Parties.
- B. The procedures used to conduct the arbitration will be determined by the arbitrator. All Parties will be entitled to call and cross-examine witnesses and will be entitled to a hearing before the arbitrator.
- C. If either Party requests a transcript, that Party will bear the entire cost of such transcript and will forward one copy to the arbitrator. If the other Party wishes to have a copy of the transcript, the total cost of the transcript will be shared equally between the Parties.
- D. If possible, the arbitration hearing will be held on the Agency's premises during the regular working hours of the basic workweek. All participants in the hearing will be in duty status.

- E. If the Parties fail to agree on a joint submission of the issue for arbitration, each will submit a separate submission and the arbitrator will determine the issue or issues to be heard. The Arbitrator will normally frame the issues(s) prior to hearing and deciding the merits of the case.
- F. If either Party raises grievability and/or arbitrability during the grievance procedure, the arbitrator will normally bifurcate the grievability and/or arbitrability issue prior to hearing and deciding the merits of the case. If either Party raises grievability and/or arbitrability after the final decision of the grievance procedure, then the arbitrator will decide, on a case-by-case basis, whether to bifurcate the issue or decide the issue when deciding the merits of the case.
- G. Normally, the Parties agree to exchange a complete list of prospective witnesses at least 15 days prior to the hearing. The Parties will attempt to mutually agree on witnesses to testify at the hearing. In the event the Parties cannot agree on appropriate witnesses, the respective list of requested witnesses will be presented to the arbitrator at the hearing. In determining who will appear, the arbitrator will approve only those persons whose testimony will be material to the matter in dispute and not unduly repetitious of other testimony to be offered.
- H. The Arbitrator will have no authority to add to, subtract from, alter, amend, or modify any provision of this Agreement.
- I. The Arbitrator's decision will be final and binding. However, either Party may file an exception to the Arbitrator's award in accordance with applicable law and regulation.
- J. The Arbitrator will be requested by the Parties to render his or her decision as quickly as possible, but in any event within 30 days after the close of the proceedings.
- K. There will be no discovery process prior to the arbitration hearing absent mutual agreement of the Parties.

Section 5. Arbitration Sites

Arbitrations will be held at Agency headquarters, in Baltimore, or other site agreed to by the Parties, considering such factors as use of official time, calling of witnesses, travel and per diem costs, and such other related considerations. Travel and per diem will be authorized for approved witnesses.

Article 26: Promotions, Reassignments, and Details

Section 1. Purpose and Policy

- A. Promotions, reassignments, and details will be carried out in accordance with applicable law, Government-wide rule or regulation, and this Article.
- B. The purpose of this Article is to enable the Agency to meet the formidable challenges it faces and to respond quickly and effectively to changes in its mission and priorities through the promotion, reassignment, and detail of its employees.
- C. The provisions of this Article only apply to promotions, reassignments, and details for positions determined by the Agency to be within the bargaining unit. Any and all references to “position” in this Article mean a bargaining unit position. This Article does not apply to promotions, reassignments, or details for non-bargaining unit positions, or bargaining unit positions filled via delegated examining (i.e., external recruitment), direct hire, and special hiring authorities (e.g., Schedule A appointments, Pathways Program to include the Internship, Recent Graduate and Presidential Management Fellows).

Section 2. Application of Merit System Principles

Merit System Principles (5 U.S.C. § 2301) will apply to all competitive promotion, reassignment, and detail actions taken under this Article.

Section 3. Definitions

For the purposes of this Article, the definitions contained in applicable law, Government-wide rule, or regulation, including Title 5 of the Code of Federal Regulations, will be incorporated. In addition:

- A. The term “promotion” as used in this Article means the change of an employee to a higher grade level within the same job classification system and pay schedule or to a position with a higher rate of basic pay in a different job classification system and pay schedule.
- B. The term “reassignment” as used in this Article means the change of an employee from one position to another position without promotion or change to lower grade, for which the employee is qualified and meets all legal and regulatory requirements.
- C. The term “detail” as used in this Article means a temporary assignment of an employee to a different classified position (i.e., a different position description number than the employee’s position of record) or to a different set of unclassified duties for a specific period with the employee returning to his/her classified position of record at the end of the detail. The employee continues to encumber the position from which he/she was detailed.
- D. The term “Subject Matter Expert” as used in this Article means a person with thorough knowledge of the requirements of the position being filled.

Section 4. Applicability of Competitive Procedures

A. Promotions

Competitive selection procedures will apply to any selection for promotion to positions unless it is specifically excluded by Section 12 (Non-Competitive Actions) of this Article.

B. Reassignments

Competitive procedures will only apply to the following type of reassignment: any selection to a position at the same or lower grade with more promotion potential than that of any position previously held on a permanent basis in the competitive service (except as permitted by Reduction-in-Force regulations contained in 5 C.F.R. Part 351).

C. Details

Competitive procedures will only apply to selections for details of more than 120 days to:

1. A higher graded position; or
2. A position with higher promotion potential greater than that of the employee's current position of record.

D. Formal Training or Career Development Program

Competitive procedures will apply to any selection to a formal training or career development program that provides for promotion to a target position.

E. Transfers/Reinstatements

Competitive procedures will apply to any transfer of a Federal employee or reinstatement of a former Federal employee to:

1. A higher graded position than the candidate's highest grade previously held on a permanent basis; or
2. A position with more promotion potential than the highest actual grade previously held on a permanent basis.

Section 5. Vacancy Announcements for Competitive Actions

A. Area of Consideration

1. The area of consideration for positions will be determined by the geographic area and grade level of the position. For positions at the GS-13 level and below, the area of consideration will be Central Office (including Washington D.C. and Bethesda, MD) for Central Office positions or the Regional Office for Regional Office positions. For positions at the GS-14 level and above, the area of consideration will be CMS nationwide.
2. The selecting official may expand the area of consideration when he or she determines the established area of consideration is not sufficiently broad to ensure the availability of high quality candidates, taking into account the nature and level of positions covered. The selecting official may restrict the area of consideration

when he or she determines that the area of consideration will yield a sufficient number of high quality candidates, taking into account the nature and level of positions covered, or when factors such as budget constraints, ceiling controls, or hiring freezes prevent the employing office from adding to its staff.

B. Information on Vacancy Announcements

Vacancy announcements for positions will include the following information:

1. Vacancy announcement number.
2. Title, series, grade, position number, organizational location, duty station, and shift of the position.
3. Bargaining unit status.
4. Total number of positions to be filled. (This does not preclude filling less or more identical, additional positions than originally posted on the vacancy announcement.)
5. A statement regarding known promotion potential, if applicable.
6. Tour of duty or notation that the position is intermittent if there is no regular tour of duty.
7. Type of appointment.
8. Opening and closing dates of the vacancy announcement.
9. Area of consideration.
10. Salary range.
11. A brief summary of major duties.
12. Qualification requirements (including any selective placement factors).
13. Rating criteria (KSAs or questions), the assessment process, and a statement describing well-qualified.
14. Application procedures.
15. Equal employment opportunity statement and reasonable accommodation statement.
16. Where appropriate, a statement that the position is temporary, its expected duration, and whether it may become permanent non-competitively.
17. Where appropriate, a statement that the candidate who is selected will or may be required to complete a Financial Disclosure Report.
18. Name and telephone number of the personnel specialist or other individual to contact for information relating to an announcement.
19. Whether or not relocation expenses will be paid.
20. Where appropriate, a statement that the candidate who is selected will be required to obtain a Government credit card and maintain it in good standing.

21. Travel requirements, if any.
22. Probationary/trial period requirements.
23. Selective Service requirements.
24. Physical requirements, if any.
25. Drug testing requirements, if any.
26. Benefits offered.
27. What to Expect Next: Notification to applicants through USAJOBS and information regarding official documentation submission.

C. Posting of Vacancy Announcements

1. Vacancy announcements will be made accessible to employees within the area of consideration.
2. Vacancy announcements will be posted for a minimum of five work days for Interagency Career Transition Assistance Plan (ICTAP) clearance and 10 work days for all other vacancy announcements.

D. Amendments, Cancellations and Re-postings

1. If a vacancy announcement has been posted and is later amended before the closing date, the announcement will include a brief statement of what has been changed. Applicants are not required to reapply.
2. The Agency may cancel any vacancy announcement at any time.
3. If a vacancy announcement has been cancelled and immediately reposted, applicants will receive an automated statement indicating the need to reapply.
4. If a vacancy announcement has been only cancelled, applicants will receive an automated statement notifying them of the cancellation.

E. Minimum Qualifications

1. Once the vacancy announcement has closed, the Agency will determine if applicants have met minimum qualification requirements. Candidates who meet minimum qualification requirements will have their applications rated and ranked to determine at what level they meet the knowledge, skills, and abilities required for the position.
2. Candidates who meet minimum qualification requirements within 30 calendar days of the closing date will have their applications further evaluated to determine at what level they meet the rating criteria outlined in the job announcement.

Note: All Minimum Qualification Requirements Must be Met Prior to Promotion or Internal Placement.

Section 6. Knowledge, Skills, and Abilities (KSAs)

A. Definitions

A KSA is a job-related knowledge, skill, or ability used in assessing candidates' qualifications. A “knowledge” is an understanding of an organized body of information (usually of a factual or procedural nature) relating to a particular subject matter area. A “skill” is a learned power to perform proficient manual, verbal, or mental manipulation of data or things, or to influence the activities of people. It embodies observable and verifiable performance parameters. An “ability” is the power to perform an activity at the present time. An ability is evidenced by the performance of some activity or work and should not be confused with an aptitude that is only a potential for performing an activity.

B. Establishing Rating Criteria (KSAs)

The Agency will establish job-related KSAs as the basis for developing questions for use in the automated staffing system.

C. Procedures

1. KSAs are developed by:
 - a. Identifying the major tasks/duties of the position through a job analysis based on information contained in the position description, career ladder criteria, qualification standards, and/or classification standards; and
 - b. Identifying the worker characteristics and demonstrated abilities (KSAs) needed to perform the job.
2. For each announced vacancy:
 - a. Questions will be included in the announcement; and
 - b. KSAs will be included in the announcement for information purposes.

Section 7. Competitive Selection Procedures

A. General Procedures

The selecting official is responsible for the selection following the review of minimum qualifications and subsequent evaluation of candidates. Employee job applications, basic qualification assessment, and rating and ranking, will be conducted through the use of an automated staffing system.

B. Evaluation Method

1. The automated staffing system will collect information and carry out processes. The human resources staffing specialist will apply rules specific to Federal staffing and be in compliance with the policies and procedures outlined in this Article.
2. The initial screening of applicants to determine their eligibility (i.e., minimum qualifications) will be accomplished through the automated self-assessment process in which the applicant will respond to questions (rating criteria) included in the job announcement. The applicant’s responses to these questions will

determine eligibility for further consideration. Applicants' answers are subject to validation based on a review by a human resources staffing specialist or designated subject matter expert (SME) to ensure that an applicant's self-assessment is supportable. A complete record of any adjustments, including the date of any adjustment, the reasons, and the name/title of the individual making the adjustment(s), will be maintained in the automated staffing system database.

C. Multiple Grade Levels or Locations

If an announcement pertains to more than one grade level or geographic location, a separate list of eligibles will be developed for each grade level and location.

D. Establishing the Best Qualified List (BQL)

There is no minimum or maximum number of applicants who may be certified as best qualified. Applicants will be certified as best qualified based on a natural break in individual scores.

E. Issuing the Best Qualified List (BQL)

The servicing human resources office will issue the BQL and forward it to the selecting official, along with the application materials of those applicants certified. The names on the BQL will be listed in alphabetical order and scores will not be indicated.

F. Reusing a Best Qualified List (BQL)

Reuse of a BQL is permitted when a vacancy occurs in the same geographical location, with the same title, to include parenthetical if applicable, series, grade, full performance level, bargaining unit status, conditions of employment, and similar evaluation criteria and duties as the vacancy previously posted. The best qualified candidates from the previous announcement may be referred instead of re-announcing the new vacancy. Additional selections may be made within 120 days from the date the initial BQL was issued.

G. Issuing a Non-Competitive List

In addition to issuing the competitive BQL, the servicing human resources office will issue an additional list of candidates who possess a non-competitive eligibility for the position (e.g., reinstatement eligibles, lateral transfers or reassignment eligibles, applicants eligible for non-competitive appointment, etc.). These applicants must self-nominate that they have a non-competitive eligibility and must meet the minimum qualification requirements.

H. Selection Procedures

The selecting official has the right to select or not select any of the candidates referred. The selecting official has the option to interview or not interview any of the candidates referred.

I. Release of Employees

When a selection has been made, the Agency will set an effective date and notify the employee. Employees selected for promotion will be released not later than the end of the first full pay period after a release date has been officially requested.

J. Declinations

In the event of a declination, the selecting official may make another selection(s). An applicant who elects to decline a job offer should do so in writing to the servicing human resources office.

K. Announcement of Selectees

All merit promotion selections will be announced to all Agency employees. This announcement will be available to employees electronically. Merit promotion selections will be posted to the Agency's intranet on a quarterly basis.

Section 8. Application Procedures for Competitive Actions

A. What Must Be Filed

To be considered for a posted vacancy announcement, an employee must file the appropriate application materials in accordance with the instructions listed in the vacancy announcement.

B. Time Limits

Applications and all supporting documentation must be received by 11:59 p.m. Eastern Standard Time on the closing date.

Section 9. Employee Information for Competitive Actions

In regard to specific vacancies for which they have filed, applicants are entitled to the following information. Applicants who request the information, will receive it as soon as it becomes available:

- A. Whether they met minimum qualification requirements;
- B. Whether or not they were among the best qualified; and
- C. The name(s) of those selected.

Section 10. Union Review of Competitive Actions

- A. The Union will be permitted to review (i.e., audit) competitive selection packages pursuant to this Article when it has reason to believe a discrepancy exists or when requested to do so by an employee.
- B. For the purposes of this Article, competitive selection packages include the following:
 1. SF-50 of selectee (copy);
 2. Referral list (signed and dated by the selecting official citing action taken);
 3. Employees' applications;
 4. Priority consideration clearance report (if applicable);
 5. Job analysis (signed and dated by selecting official);
 6. Vacancy announcement;

7. Position description; and
 8. Request for personnel recruit action.
- C. The Union will make the request to the Agency's Labor Relations Officer. The Union will provide the Agency's Labor Relations Officer with an updated written designation identifying the names of the Union representatives who are responsible for conducting reviews. Any changes to the list of designated representatives will be sent to the Agency in writing. The representative designated to conduct the audit will not have been an applicant for the promotion package being audited.
 - D. Employees who believe they were improperly excluded from consideration may request review of the promotion package through the Union review process described below.
 - E. If the employee chooses to use the Union procedure, he/she must make a written request to the Union within 15 working days after the selection is announced to all employees. A Union request under section A above must be made within the same time limits.
 - F. The Agency will make the selection package, redacted as necessary in accordance with the Privacy Act, available to the Union within 21 working days of receipt of the written request. The Union will treat the information confidentially and review it in the location designated by the Agency and in the presence of a designated management official.
 - G. If during the course of the audit additional information is determined necessary, such information will be secured from the Agency's Labor Relations Officer.
 - H. Employees who elect to use the grievance procedure rather than the audit procedure must initiate action in accordance with Article 24, Grievance Procedure.

Section 11. Priority Consideration Arising From Competitive Actions

A. Definition

For the purpose of this Article, a priority consideration is the genuine consideration for non-competitive selection given to an employee as the result of a previous failure to properly consider the employee for selection because of procedural, regulatory, or program violation. Employees will receive one priority consideration for each instance of improper consideration. A priority consideration does not give the employee a right or a guarantee to be selected for any vacancy. The area of consideration does not have to be identical to the area of consideration from the vacancy for which consideration was lost. The applicant only needs to fall within the area of consideration to invoke priority consideration.

B. Processing

1. Employees will be notified in writing by the authorized management official of entitlement to each priority consideration. Such notice will advise employees that if a vacancy is announced and posted and the employee wishes to exercise his/her priority consideration, he/she should submit the necessary application to the designated Agency human resources official with a written request that he/she wishes priority consideration for the vacancy.

2. Priority consideration is to be exercised by the selecting official, at the option of the employee, for an appropriate vacancy. An appropriate vacancy is one for which the employee is interested, is eligible, and that leads to the same grade level as the vacancy for which proper consideration was not given.
3. Prior to the evaluation of other applicants, the name(s) of the employee(s) requesting to exercise priority consideration will be referred to the selecting official. The selecting official will make a determination on the request prior to evaluating other applicants.
4. The fact that the employee chooses to exercise a priority consideration does not preclude that employee from also filing an application through the regular posting process.

C. Union Notification

In order to assure compliance with this section, the Union's Principal Designee will be furnished statistics on priority considerations granted and exercised and the results. The statistics will include the employee's name and component. Statistics will be kept and provided to the Union on a quarterly basis. The Union's Principal Designee will also be notified in writing of each individual priority consideration completed.

Section 12. Non-competitive Actions

A report of all individual non-competitive actions (excluding those non-competitive actions resulting from realignments, reorganizations, changes in position description, etc.) will be provided to the Union's Principal Designee at the beginning of each month. The report will include the employee's name, official duty location, current component, component he or she is transferring to, grade, position, and effective date.

The following actions may be taken non-competitively:

A. Promotions

1. Promotion of an employee whose position is reclassified at a higher grade because of additional duties and responsibilities (i.e., accretion). All of the following must exist in order to support an accretion promotion:
 - a. There is demonstrated evidence of higher-level work;
 - b. The old job is absorbed in the new job or is a natural successor to the previous position;
 - c. The accretion action will not result in the creation of a new position (i.e., there is no residual vacancy to be filled); and
 - d. The position is determined to have no further promotion potential beyond the grade level to which the employee is accreted.
2. Promotion of an incumbent or an individual entitled to reemployment rights to a position that is reclassified to a higher grade without significant changes in duties as a result of the application of new Office Personnel Management (OPM) classification standards or the correction of a previous classification error.

3. Promotion of an employee covered by an approved training agreement.
4. Promotion of an employee within a career ladder provided the employee has met all qualifications and performance requirements established for the career ladder and sufficient work exists at the next higher grade level.
5. Promotion from an understudy or trainee position when the employee was selected under competitive procedures for the understudy or trainee position, provided the employee has met all qualifications and performance requirements for the target position.
6. Re-promotion of an employee, up to the highest grade previously held on a permanent basis in the competitive service, provided that the employee meets all qualifications, regulatory, and legal requirements for the series and grade, and was not demoted or separated from that grade based on performance or conduct.
7. Promotion directed by proper authorities (for example, judges, arbitrators, FLRA, or other appropriate authorities).
8. Temporary promotions or details of an employee to a higher graded position or a position with known promotion potential totaling 120 days or less. Any temporary promotion beyond 120 days must be made under competitive procedures. The release date for employees selected for non-competitive temporary promotions will be negotiated by the Agency's human resources office in coordination with the gaining and losing managers. However, the release date will not exceed one full pay period following the official notification of selection by the human resources office, except upon request of the employee.
9. Promotion after being selected through priority consideration procedures outlined in this Article.
10. Permanent promotion from a temporary promotion when the announcement stated that the temporary promotion may become permanent.

B. Reassignments (Employee or Management Initiated)

This section includes any and all reassignments not listed in Section 4 of this Article, including a reassignment to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service and did not lose because of performance or conduct reasons. The release date for employees selected for non-competitive reassignments will be negotiated by the Agency's human resources office in coordination with the gaining and losing managers. However, the release date will not exceed two full pay periods following the official notification of selection by the human resources office, except upon request of the employee. An employee reassigned to a different duty station, which will require relocation, will be given at least 60 days written advance notification, with a copy to the Union. Relocation expenses, if appropriate, will be paid in accordance with applicable law, Government-wide regulation, and HHS travel regulations.

C. Hardship Reassignment and Duty Station Relocation Requests

The Agency and the Union recognize that employees may experience personal hardships that could be alleviated by the employee being reassigned to another position or duty

station. A hardship reassignment or duty station relocation is not an employee entitlement and is at the discretion of the Agency, which will give genuine consideration to the request. The employee must demonstrate a hardship that can be alleviated by being reassigned to another position or duty station. The employee must have been employed by CMS for at least one year.

Definition

Hardship: Serious health condition or circumstance that affects the health and/or welfare of the employee and/or a family member, and requires the employee to be temporarily or permanently reassigned to a vacant position and/or a new duty station.

Examples of hardship may include a specific medical situation where services or care are more accessible in a specific location; special education needs for children related to physical or mental disability; and specific situations related to the health and welfare of family members.

Request Process

1. The employee will meet, discuss with, and submit the “Memorandum for Employee-Initiated Hardship Reassignment/Duty Station Relocation Request” form to their immediate manager. Options may include:
 - Option A** - Permanent reassignment to another position. For reassignment requests, the employee must also include an updated resume with the form.
 - Option B** - Temporary extended (up to 90 days) episodic flexiplace (EFP). The employee must adhere to all requirements and meet the criteria outlined in Article 29, including submission of information in the electronic telecommuting system, and completion of the cost analysis tool if the ADS will be 80 miles or more from his/her assigned Agency office location. If the hardship continues beyond three months, the employee may submit a request to extend the EFP arrangement for up to another 90 days. The manager may request additional documentation.
 - Option C** - Fulltime telework. Employees must follow the requesting procedures outlined in Article 29, Section 12. Component Heads/Consortium Administrators may consider off-cycle requests due to hardships.
 - Option D** - Temporary or permanent relocation to another CMS location while continuing to work in the same position. If the location will be 80 miles or more from the assigned Agency office location, the employee must complete the cost analysis tool in the electronic telecommuting system. This option will only be considered if the Agency determines the options above are not feasible.
2. If the manager agrees that the circumstances meet the hardship definition above, and the proposed solution is a reassignment to another position:
 - a. The immediate manager or employee will forward the completed form and resume to the potential hiring manager(s) identified by the employee.
 - b. The hiring manager will submit the resume to the human resources office for a determination that the employee is qualified for the position, generally within five working days of receipt of the form and the resume.

If the human resources office determines the employee is not qualified for the position, the employee will be notified in writing of such decision, as quickly as possible, but not later than 30 calendar days.

- c. If the human resources office determines that the employee is qualified for the position, the hiring manager will render a decision as quickly as possible, but not later than 30 calendar days from receipt of the determination.
3. If the manager agrees that the circumstances meet the hardship definition above, and the proposed solution is to relocate to another CMS location, the Agency will consider such things as space limitations, portability of work to the proposed location, cost analysis, etc. For all duty station relocation requests, including temporary extended EFP, a decision will be rendered as soon as possible, but not later than 30 calendar days after the employee's initial request.
4. In all circumstances:
 - a. If the reassignment or duty station relocation is approved, the Agency will provide the employee written notice and the reassignment/relocation will be processed in accordance with appropriate procedures.
 - b. If the reassignment or duty station relocation request is denied, the Agency will provide the employee with written notice, which will state the specific reasons for the denial.
5. All relocation expenses, including the cost of returning to the assigned Agency office location, if applicable, will be the responsibility of the employee.
6. All hardship proposed solutions and arrangements must receive Component Head/ Consortium Administrator approval.
7. The Union's Principal Designee will be provided a quarterly report of all hardship reassignment and duty station relocation requests, including a summary of the reasons for approval or denial of each request.

D. Details

Any and all details not listed in Section 4 of this Article, including a detail to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service and did not lose because of performance or conduct reasons. Details of an employee will be processed in increments of 120 days or less with the ability to extend as necessary. Details of 30 days or less are not required to be documented by the Agency. The Agency will document any detail in excess of 30 days in the employee's Official Personnel Folder.

E. Voluntary Non-Competitive Detail Self-Referral Registry

1. A Voluntary Non-Competitive Detail Self-Referral Registry ("Detail Registry") will be maintained on the Agency's intranet for employees to voluntarily self-identify any interest they may have in participating in voluntary non-competitive details in excess of 30 days.

2. Employees interested in participating in voluntary non-competitive details in excess of 30 days can post their names on the Detail Registry. Employees may also post on the Detail Registry the performance attributes they possess (e.g., general relevant experience, knowledge, skills, and training) as well as desired detail experiences.
3. Managers who are seeking to fill non-competitive details in excess of 30 days should consult the Detail Registry and should give genuine consideration to the employees' stated performance attributes and interests. The Detail Registry will be for informational purposes only and will operate in a manner consistent with the Agency's right to determine employee qualifications and to assign work.

F. Voluntary Change to a Lower Grade

Change to lower grade to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service and did not lose because of performance or conduct reasons. An employee desiring consideration for a voluntary change to a lower grade must submit a written request to his/her manager. Prior to acting on an employee's request for a voluntary change to lower grade, the Agency will assure that the employee has been fully apprised in writing about the effect of such an action.

G. Temporary Assignment to Higher Graded Position

Employees may be detailed to a higher graded position without a change in pay. When employees are temporarily assigned to a higher graded position for a period of more than 30 days, but less than 121 days, a temporary promotion will be effected at the beginning of the first pay period after receipt in the human resources office of the approved Request for Personnel Action (SF-52), provided the employee otherwise meets all qualifications and legal and regulatory requirements. Payment at the higher grade resulting from a temporary promotion expected to extend beyond 30 days will be effective from the first day of the temporary promotion. Payment at the higher grade resulting from a temporary promotion originally expected to last for fewer than 30 days, but that is extended beyond 30 days, will be effective on the 31st day. All temporary assignments to higher graded positions for more than 30 days must be documented in the employee's OPF. The release date for employees selected for details to higher graded positions will be negotiated by the Agency's human resources office in coordination with the gaining and losing managers. However, the release date will not exceed one full pay period following the official notification of selection by the human resources office, except upon request of the employee.

H. Other Non-competitive Actions

1. Transfer of a Federal employee or reinstatement of a former Federal employee at the same or lower grade, or to a position with the same known promotion potential as the highest graded permanent position held by the employee.
2. A position change permitted by reduction-in-force regulations.

I. Details for Medical Reasons

An employee recuperating from serious illness or injury who is temporarily unable to perform the full range of duties of his/her position as certified by the health care provider may voluntarily submit a written request to the manager for temporary assignment to duties commensurate with the employee's temporary work-related restrictions. The certification from the employee's health care provider will include the nature, severity, and duration of the employee's serious illness or injury; the activity or activities that the serious illness or injury limits; the extent to which the serious illness or injury limits the employee's ability to perform the activity or activities; and why the work-related restrictions are needed. When appropriate, the Agency may require that such request be reviewed by an independent, appropriately qualified licensed physician (e.g., a Federal Occupational Health physician) retained at the Agency's expense to determine whether or not the medical certification is adequate or make other determinations as necessary. If it is the opinion that such medical documentation is not adequate, the employee will be advised as to what additional documentation is necessary. The Agency will consider such requests, in accordance with applicable law, Government-wide rule or regulation and medical recommendations. To the extent determined appropriate by the Agency, the employee may be temporarily assigned to an appropriate vacancy or duties and responsibilities commensurate with the employee's illness/injury and qualifications.

Section 13. Career Ladder Procedures

If a career ladder is established by the Agency for a particular position, management will outline the criteria that an employee must meet in order to be promoted. A copy of the position description will be given to each employee upon entry into the career ladder. The employee will also be advised of his or her earliest eligibility date to be considered for promotion under the career ladder.

A. Developmental Assistance Plan (DAP)

1. At any time a manager and/or employee recognize an employee's need for assistance in meeting the career ladder advancement criteria, the manager and employee will develop a plan designed to assist the employee in meeting the career ladder criteria. The Developmental Assistance Plan (DAP) should include applicable training, as well as any other support appropriate.
2. Employees who are on a Performance Improvement Plan as outlined in Article 21 must first demonstrate successful performance at their current grade level before a DAP is considered.

B. Career Ladder Advancement Assessment

1. Career ladder promotion determinations will be based on the following criteria: (1) the criteria set forth in the career ladder position description; (2) the applicable qualification requirements issued by OPM; (3) all legal and regulatory requirements, such as time-in-grade; (4) applicable selective placement factors for the position; (5) the employee's performance and conduct are at a satisfactory level; and (6) there is sufficient work available at the next higher grade level.

2. Promotions in career ladders shall be effective at the beginning of the first full pay period after the employee has met the above criteria.
3. If an employee is not meeting the criteria for promotion, the employee will be provided with written notice at least 30 days prior to the earliest eligibility date for promotion, except in those rare circumstances where there is a new employee or an employee who has been on extended leave and the manager has not had the requisite time to assess the employee's performance for promotion. The written notice will identify the criteria that the employee is failing to meet.
4. If the employee is not meeting the criteria for promotion, the Agency will provide the employee up to an additional 12 months from the earliest eligibility date to meet the promotion requirements. The Agency may promote the employee at any such time during the additional 12 months that the employee meets the promotion requirements.
5. If the employee fails to meet the requirements for promotion after the additional 12-month period, the Agency may reassign the employee to a non-career ladder position with no promotion potential beyond his/her current grade.

Article 27: Background Investigations

Section 1. Appropriate Levels of Background Investigations

Consistent with the Agency's right and requirement to control internal security, the Agency is mandated to determine the appropriate sensitivity levels for employees based upon the required duties of their positions (including, but not limited to, any access to information, data, and/or systems). The required level of investigation will be set at the lowest appropriate level allowable under Federal regulations governing access to federal facilities and sensitive information, as determined by the Agency.

The Agency anticipates that this determination will result in the majority of employees being required to have a Tier 1 investigation (T1), formerly known as a Non-Sensitive Level 1 National Agency Check with Inquiries (NACI) level of investigation. For these employees (i.e., those determined by the Agency to require a Tier 1 only), if documentation indicating that a Tier 1 had previously been conducted exists in the employee's electronic Official Personnel Folder (e-OPF) or is collaterally verified, no further investigations will be required unless Federal regulations governing access to facilities and sensitive information change during the term of this contract to require reinvestigation. In addition, a change in duties and/or position may require additional/higher-level investigations, as determined by the Agency.

Section 2. Procedures

The Agency will adhere to the Suitability Determination/Suitability Action procedures as set forth in 5 C.F.R. Part 731. In the event that an employee is not approved for the level of access determined by the Agency to be appropriate as outlined in Section 1 herein, the Agency will make a reasonable effort to minimize adverse effects on the employee by considering reassigning the employee to another position for which he/she is qualified.

Prior to initiating any adverse action against an employee for failing to meet the standard for approval at the level of access deemed appropriate by the Agency, the employee will be afforded the opportunity to offer documentation and/or provide any explanation to refute issues raised during security processing.

Article 28: Position Descriptions and Classification

Section 1. Positions

The Parties agree that position descriptions will accurately reflect the duties and functions performed by bargaining unit employees and degree of supervision related to their positions, although temporary variations from the official position description may occur on an exception basis. It is also understood that “other duties as assigned” as used in the position description means duties related to the basic job.

Section 2. Equal Pay

The Agency and the Union agree that the principle of equal pay for substantially equal work will be applied to all position classification actions.

Section 3. Position Description

- A. The Agency will maintain a complete and up-to-date file of position descriptions of all classified positions in the bargaining unit and will provide each employee with a copy of his/her position description.
- B. When an employee believes that there is a question concerning the accuracy of his/her official position description, including the inclusion or exclusion of a major duty, the employee will discuss this concern with his/her manager. If the manager and the employee cannot resolve the issue, the accuracy of the position description may be grieved in accordance with negotiated grievance procedures contained in Article 24.

Section 4. Position Classification

- A. The Agency will ensure that all positions are properly classified. The Parties agree that audits are intended to ensure that positions are properly classified.
- B. If an employee questions the proper classification of a position (i.e., title, series, or grade), the employee will discuss this concern with his/her manager. If the question is not resolved, the employee or manager may request a desk audit from the Agency’s human resources office. If the request results in a determination that an audit be conducted, the employee will be afforded an opportunity to discuss the results and analysis of the audit with his/her manager and, if requested by the employee or the manager, with the Agency’s human resources office. Copies of the audit findings will be given to the employee and the manager within a reasonable amount of time. Upon request by the Union, copies of the audit findings will be provided.
- C. If an audit is conducted, the Union will be provided with the following information for the purpose of providing advice and guidance to the employee prior to the audit: the name of the employee affected by the audit; the position description number audited; and when the audit will take place.
- D. In accordance with 5 C.F.R. Part 511, an employee may file a statutory classification appeal of the title, series, or grade of his/her position description with the Agency’s human resources office or directly with the Office of Personnel Management (OPM), but

not both. The Agency's human resources office must act on the appeal within 60 days of receipt or forward it to OPM for action. The Agency will provide advice and assistance to employees filing appeals with either organization.

- E. Prior to the implementation of any new classification standards or changes in existing classification standards that affect working conditions, the Agency will give notice and, upon request, bargain with the Union to the extent required by law.

Section 5. Effective date

Changes in grade level based on reclassification will be effective on the first pay period following final approval of the action.

Section 6. Employees Affected by Classification Actions

Prior to the implementation of any personnel action (e.g., reassignment, promotion, demotion) that affects working conditions, the Agency will give notice and, upon request, bargain with the Union to the extent required by law. The Agency will place employees whose positions have been reclassified into new or updated position descriptions according to the internal placement provisions of 5 C.F.R. Part 335.103.

Article 29: Telecommuting Programs

Section 1. Definition of Flexiplace and Telework

Flexiplace and telework are interchangeable terms that refer to the Agency's telecommuting programs which enable an employee to work at an alternative duty station (hereinafter referred to as "ADS") for a period of time, subject to management approval. An ADS may include an employee's residence or other location approved in advance by management. The Agency has four types of telework programs: (1) Episodic Flexiplace (EFP); (2) Scheduled Flexiplace (SFP); (4) Medical Flexiplace (MFP); and Fulltime Telework (FTP).

Section 2. General Telework Provisions

- A. Telework is designed to promote improved morale, organizational effectiveness, and provides employees the ability to balance work and family responsibilities.
- B. CMS supports telework to promote the Agency's mission and strategic goals, improve costs, increase productivity, reduce environmental impacts, decrease commuting costs, improve employee turnover and absenteeism, and create a flexible work environment to increase the efficiency and effectiveness of Agency operations.
- C. Decisions concerning employee participation in the Agency's telecommuting programs will be based upon such business related factors as portability, productivity, efficiency and effectiveness, and impact on performance of the Agency's mission.
- D. The Agency retains the authority to review and change an employee's continued participation in any of the telecommuting programs, consistent with the provisions of this Article.
- E. Upon the effective date of this Agreement, all employees that elect to continue participating in any of the Agency's telework programs must submit a new Telework Agreement in the CMS telecommuting system within 30 days.
- F. The tour of duty for the Agency's telework programs will be the same as that established in accordance with Article 10, Hours of Work, of this Agreement.
- G. Full-time and part-time employees on any of the Agency's flextime or fixed schedules are eligible to participate in the telework programs, subject to the eligibility criteria and conditions set forth in this Article.
- H. Credit hours may be earned while working at an ADS subject to the requirements in Article 10, Section 7 of this Agreement.
- I. Participation in the program is voluntary, and an employee may withdraw their Telework Agreement at any time through the Agency's telecommuting system. If an employee voluntarily withdraws their Telework Agreement, they are not eligible for a new Telework Agreement for 12 months from the withdrawal date. However, exceptions may be granted at the manager's discretion.
- J. Employees who are regularly scheduled to be out of the office more than two days per week for any reason(s) except official travel (e.g., telework, part-time schedule, alternative work schedule), and those employees who are out of the office for five days or more in a pay period (e.g., employees that work the 9 ½-hour flextime schedule with two days per week of scheduled

- flexiplace) do not have guaranteed assigned space and may be required to cube share, use hoteling stations, or work from an alternative location at any time.
- K. When an employee is approved to participate in any of the Agency's telecommuting programs, that approval is based on the employee's current position and duties, and approved ADS location on the Telework Agreement.
- L. Employees must have an approved, accurate, and up-to-date (e.g., correct ADS location, etc.) Telework Agreement prior to working in any of the Agency's telecommuting programs.
1. In the event an employee's position or ADS address changes, the employee must submit and obtain approval for a new Telework Agreement and telework schedule prior to working in any of the Agency's telecommuting programs.
 2. A telework participant should confirm if a new position is eligible for the desired frequency of telecommuting *before* accepting it.
 3. An employee should recognize that there is no guarantee that they will be approved for an ADS outside of the local travel area, and must obtain approval for any change in an ADS *prior to* planning any move.
- M. During periods when the employee's workplace is undergoing construction or renovation, the Agency may require employees with a Telework Agreement, except those that participate only in EFP, to work from an approved ADS location.
- N. For employees participating in the SFP or MFP telecommuting programs, the address on the Telework Agreement is their ADS. Employees may not work at any other ADS without prior management approval. However, at the manager's discretion, he or she may approve a temporary change to the ADS location.
- O. For employees participating in FTP, their address on the Telework Agreement becomes their official duty station and will determine their locality pay.
- P. Employees that participate in the SFP, MFP, and/or FTP telework programs who do not receive advance approval for changes to their ADS or duty station location are subject to removal from all Agency telework programs.
- Q. Prior to participating in a telecommuting program, an employee must complete telecommuting training as directed by the Agency. The Agency will send out a Broadcast to all employees to inform them of the training requirement and to provide the link to employees.
1. Training will be provided to all participants. Training will address telecommuting guidelines, participant responsibilities, strategies for working successfully at a remote location, and IT equipment and support.
 2. Participants and managers may be required to attend additional in-person and web trainings to support the success of the telecommuting programs.
 3. Employees who participate in the fulltime telework program must complete specific FTP training that should not exceed 3-4 hours.
 4. Prior to implementation, the Union will be given the opportunity to review the training materials for all courses and provide input. The Agency will give genuine consideration to the Union's input before the course material is finalized.

- R. While working from home, employees are still considered on duty time; therefore, in case of an injury, Workers' Compensation rules may still apply. Liability will not be assumed by the Agency for damage or repair of personal items owned by the employee while working from home.
- S. Upon request to the Agency's Labor Relations Officer or his/her designee, the Agency will provide the Union with a copy of telework reports.

Section 3. Episodic Flexiplace (EFP)

- A. EFP may be approved for regular work and special assignments of specific and limited duration that can be performed at the ADS. The address on the Telework Agreement is presumed to be the ADS location unless otherwise indicated in the EFP request.
- B. Requests for EFP must meet the eligibility conditions, criteria, and factors listed in Section 4.D.1 through 6 of this Article.
- C. In accordance with Article 26, Section 12.C. of this Agreement, extended EFP up to 90 days may be an option for employees experiencing a personal hardship.
- D. All tasks proposed for EFP must be able to be performed seamlessly at the ADS (e.g., without interruption due to lack of access to specific CMS systems or resources). A request for EFP must be made to the manager within a reasonable time in advance, but normally no later than the day before the requested EFP. (Emergency requests for EFP will be considered on a case-by-case basis.) The Agency will give genuine consideration to an employee's request to work EFP.
- E. Employees must submit separate requests for each occasion for which the employee is requesting to participate in EFP using the Agency's online telecommuting system. If the system is not available, the employee may request EFP by contacting his/her manager via phone or email. The manager may grant approval and the employee will complete the form in the system no later than close of business the day of the return to the office.
- F. The EFP request will be approved or denied within a reasonable time, normally no later than one day prior to the requested EFP. Normally, EFP requests submitted at least 10 working days in advance will be approved or denied within five working days after it is submitted. If EFP is denied, the manager will note the reason(s) for the denial on the form.
- G. EFP that creates or approximates a de facto third or fourth Scheduled Flexiplace (SFP) day per week is not permitted and will not be approved. Normally, employees electing to participate in two or more days of SFP per week will not be eligible to concurrently participate in EFP. Where there is a business interest (e.g., an employee being able to work instead of taking leave when the manager needs the work completed), a manager may approve EFP for an individual participating in SFP two or more days per week.
- H. Additional days of EFP are permitted if the extra EFP is due to inclement weather. In such cases, employees do not have to change or cancel their SFP day(s).

Section 4. Scheduled Flexiplace Eligibility (SFP)

- A. Scheduled Flexiplace, or SFP, is one of the Agency's telecommuting programs under which an employee may request to work from an ADS one or more days of the week on a recurring, regular weekly basis. The manager will assess the extent of portability of the work, which will

- determine, among other factors, the maximum number of appropriate SFP days for the requesting employee.
- B. Employees that elect to work the 8 ½-hour flextime schedule have the option to request up to three days of SFP per week. Employees that elect to work the 9 ½-hour flextime schedule can request SFP for up to 5 days per pay period, but no more than two days of SFP in the week that includes their non-work day. For employees that elect to participate in the 10 ½-hour flextime schedule, SFP is limited to two days per week.
- C. In order to be eligible for Scheduled Flexiplace (SFP), employees must first request and be approved for Episodic Flexiplace (EFP) for a time period sufficient to allow the manager to determine the employee's suitability for a SFP arrangement ("trial period").
1. At a minimum, for employees requesting one day of SFP, this trial period will be 10 working days of EFP.
 2. In order to be eligible for SFP for two days per week, employees must first work successfully on SFP for one day per week for at least three months, in addition to the trial period.
 3. To be eligible for SFP for three days per week, employees may be required to work successfully on SFP two days per week for no more than three months.
 4. Employees on SFP as of the date of this Agreement will be allowed, at their option, to continue working their current flexiplace schedules and are not subject to the provisions in Section 5.A.
- D. The following conditions must be met to participate in SFP or remain on SFP:
1. The employee's most recent performance rating of record must be, at a minimum, a rating of "Achieved Expected Results," and the employee must maintain at least that level of performance throughout the period in which the individual is working SFP.
 2. The employee must not be on a Performance Improvement Plan (PIP).
 3. The employee must not be on leave restriction.
 4. The employee must not have been issued any disciplinary or adverse action (e.g., reprimand or suspension) within the previous twelve months. However, at the manager's discretion, an employee may be approved to resume participation in SFP after six months.
 5. The employee must not have been disciplined for being Absent Without Leave (AWOL) for more than five days in any calendar year.
 6. The employee must not have ever been officially disciplined for downloading, viewing, or exchanging pornography, including child pornography on a Federal government computer or while performing official government duties.
 7. If an employee wants to increase or decrease the number of days that they telecommute or the type of telecommuting program that they are participating in (or otherwise want to change their telecommuting schedule), they must ensure that they receive approval for the change and that the Agency's telecommuting system reflects their revised telework participation level.

- E. In order for an employee to be eligible initially for SFP or remain eligible, the Agency must determine that:
1. The employee's regular work assignments are routinely portable, i.e., on a recurrent basis, regular assignments can be successfully performed at an ADS. The level of portability, among other factors, may determine the appropriate amount of SFP days an employee can telework. Assignments that are not portable include those assignments that require personal face-to-face internal or external customer contact, internal or external customer service assignments, or assignments that require physical access to the official duty station.
 2. The employee does not require close supervision, continuous feedback, or face-to-face contact with management or co-workers.
 3. The employee's work does not require access to material that cannot be removed from the official duty station.
 4. The employee must, at a minimum, meet the manager's expectations while on telework to earn and retain telework privileges, such as responsiveness, working only from an approved ADS, flexing in and out only with notice, etc.
 5. Consistent with provisions of this Article, the manager retains the authority to review an employee's continued telework participation.
 6. The employee reviews all telework criteria and responsibilities and attests that he/she agrees to the terms of this Article.

Section 5. SFP Request Processing Procedures

- A. Before submitting a request to initially work SFP, the employee and his/her manager will meet to discuss the Agency's SFP requirements and the provisions of this Article, including the eligibility criteria, the terms and conditions for participation, and employee responsibilities. At this meeting, the employee and his/her manager will also discuss the requirements contained in the Agency's online SFP request form that the employee will finalize and submit online for final review and adjudication. The online form will, at a minimum, require an identification of the specific day(s) requested, proposed assignments, and a certification by the employee to abide by the provisions of this Article and other information as required by the form.
- B. Employees are not eligible to participate in SFP without an approved SFP application. Requests to participate in SFP will be made using the Agency's online telecommuting system, except when it is unavailable, in which case the paper form will be used.
- C. Individual employee participation will be decided on a case-by-case basis. If an employee's request to participate in SFP is denied, the manager will indicate the reasons for disapproval within the Agency's online telecommuting system. Requests will be approved or denied within 10 working days of submission online.

Section 6. Employee Responsibilities While Telecommuting

The employee must adhere to the following while teleworking under any of the telework programs defined by this Article:

1. The employee will follow Agency time and attendance and leave policies at the ADS as though he/she were at the Agency office location.
2. The employee will promptly inform the manager whenever problems arise that adversely affect his/her ability to perform work at the ADS.
3. The employee will adhere to the Standards of Conduct for Executive Branch Employees and any other Agency policies while working at the ADS.
4. The employee will not request others who remain physically in the office to accomplish tasks which are the responsibility of the employee.
5. The employee will not engage in any non-governmental activities while in an official duty status at the ADS. This includes caring for a child or providing elder care or conducting personal business except as provided for in Section 11 of this Article.
6. The employee will keep his or her Telework Agreement up to date, including providing the Agency with the approved ADS address and will not change the ADS location without advance management approval.
7. The employee will check in/check out via email (or telephone, if email is not available due to technical issues) at the beginning/end of the work day, with his or her manager while working at the ADS. If earning credit hours at the ADS, the employee will also check in/check out at the beginning/end of the credit hour period.
8. The employee will provide a designated work area at the ADS adequate for the performance of his or her official duties.
9. The employee will maintain a telephone, at his/her own cost, at the ADS and must furnish his/her manager, co-workers, and internal customers with the telephone number so that during regular working hours, he/she is fully accessible to the manager, co-workers, and internal customers.
10. The employee must maintain internet access (except dial-up). On a case-by-case basis, the employee's manager may allow exceptions to this requirement if it is determined that the employee can perform successfully at the ADS.
11. Communication with external partners must be seamless while employees are teleworking. All employees are responsible for making arrangements to be responsive to external partners at no additional cost to the Agency.
12. The employee will check his/her Agency assigned voicemail as often as required to successfully perform his/her assigned duties, but no less than twice during the work day to respond to inquiries from external customers, except where otherwise directed by the manager.
13. The employee will furnish and maintain all equipment deemed necessary by the manager to perform at the ADS.
14. The employee must use the Agency-assigned laptop at the ADS for the completion of work while teleworking, except where otherwise agreed to by the manager in advance.
15. The employee will read and sign any Agency required safety checklists. The employee's ADS must have a smoke detector and readily accessible fire extinguisher.

16. The employee will permit the Agency to inspect the ADS during the employee's regular working hours to ensure proper maintenance of Government-owned property and conformance with safety standards. The employee should be given at least a two hour notice of the Agency prior to inspection.
17. The employee will assure that if any Government-owned equipment is used at the ADS, it will be used only for authorized purposes.
18. The employee will follow standard security procedures when removing official records from the official duty station. The employee will assure that records and files are secure in order to protect against unauthorized access or disclosure.
19. The employee will be liable for damage to any Government-supplied property, including equipment at the ADS, in the same way the employee may be held liable at the official duty station. If Government-supplied property is damaged at the ADS, the employee will return it to his/her official duty station for repair or service.
20. The employee is responsible for all operating costs, home maintenance, and any other incidental costs (e.g., utilities, internet, cellular, long distance costs) associated with the use of the home for business purposes.
21. The employee will safeguard Agency equipment, and sensitive, Privacy Act, or proprietary information that is accessed from the ADS. Sensitive, Privacy Act or proprietary information includes, but is not limited to, individually identifiable information such as names, addresses, social security numbers, and health insurance claim numbers of Agency beneficiaries, medical or other personal Agency beneficiary information, personnel information, and individually identifiable financial information.
22. As specified in Article 35, employees may be required to use specific technology or software (e.g., software for collaboration and communication, such as video, instant messaging, document sharing, etc.), to perform Agency work, participate in training, and/or attend meetings.
23. Employees should not use "out-of-office" messaging on days they are working at the ADS.

Section 7. Changes to, Suspension of, and/or Removal from SFP

- A. Employees may be removed from SFP for failure to meet any of the eligibility criteria, to adhere to required responsibilities, or to comply with the other provisions of this Article.
- B. If an individual employee is removed from SFP, he/she may not request or be considered for SFP for a minimum of one year from the date of his or her removal. However, at the manager's discretion, an employee may be approved to resume participation in SFP after six months.
- C. A manager may temporarily suspend SFP for individual employees or groups of employees when she/he determines that operational needs or work requirements necessitate such action for a specified period of time (e.g., due to meetings, training, conferences, mission-critical projects, etc.). If the circumstances requiring such action permit, the Agency will provide the employee with advance notice of at least two weeks. The Agency will limit this change to as short a time as necessary to meet operational needs or work requirements.

- D. A manager may change an employee's SFP schedule (frequency or days), or remove an employee from SFP based on:
 1. Changes to the portability of the work;
 2. Documented concerns with the employee's performance of assigned work;
 3. A pattern of an employee not being responsive in a timely manner or failing to adhere to the responsibilities in Section 6;
 4. The factors listed in Section 4.E.
- E. The reason(s) for the change to, suspension of, or removal from an employee's approved telework arrangement will be provided in writing, if requested by the employee.
- F. These situations are all distinct from Call Backs in Section 8.

Section 8. Call Backs from Telework

- A. Employees on SFP and EFP may be called back from their ADS when, due to an urgent and/or unforeseen circumstance, the Agency determines the employee must report to his or her official duty station for a meeting or to perform work that management determines cannot otherwise be performed at the ADS.
- B. If the Agency determines that the employee needs to report to his or her official duty station due to a business exigency, the employee will report generally within three hours of notification, or as soon as practical based on the location of the ADS. If the call back occurs at the end of the employee's work day, the employee must report no later than the next business day.
- C. When the Agency calls an employee back, the time spent in travel to return to the office from the ADS is considered duty time. As such, the Agency will not incur any travel related expenditures.
- D. Employees approved to temporarily work at an ADS (i.e., EFP) in a geographic area outside of his/her official duty location are not subject to the call back provision defined in this section as appropriately determined by the manager.

Section 9. Medical Flexiplace (MFP)

- A. An employee may request to work at an ADS for a specified period of time because of a temporary personal injury or illness of the employee. This type of episodic flexiplace program, which is distinct and fully separate and apart from EFP in Section 3, will be known as the Medical Flexiplace Program (MFP).
- B. An employee may request to perform work at home for a specified period of time if she/he suffers from a temporary (generally lasting no more than three months) personal injury or illness that prevents the employee from commuting to the official duty station or that would make it difficult or impossible for the employee to perform an entire day's work at the official duty station, but that would not preclude the employee from performing her/his official duties at home.

Note: In emergency situations, EFP may be granted by the manager to allow the employee time to obtain and submit the medical documentation.

- C. The employee must submit a written request to her/his manager using the Agency's Medical Flexiplace Program (MFP) form (Form CMS-20025).
- D. The employee must also obtain administratively acceptable medical certification in support of the request. Employees may use the MFP Form CMS-20025Q, or obtain their own certification, which will, at a minimum, specifically provide:
 1. The specific nature of the illness or injury;
 2. The anticipated beginning and ending dates of the incapacitation;
 3. The anticipated date that the employee is able to begin working MFP;
 4. The specific reason(s) why the employee is incapable of commuting to the official duty station and/or performing her/his duties at the official duty station for an entire day; and
 5. A statement that the employee is capable of working at home, subject to any specific limitations.

NOTE: The above medical documentation is not submitted to the employee's manager. See Section I below.

- E. Based on the individual circumstances, the Agency may require additional medical certification deemed necessary to support the MFP request.
- F. In determining whether the employee can effectively perform her/his work responsibilities at home, the manager also will consider all of the criteria for SFP.
- G. Individual employee participation will be decided on a case-by-case basis.
- H. Generally, within three working days of receipt of an employee's MFP request (Form CMS-20025 only), the employee's immediate manager will make a determination as to whether the employee's work is sufficiently portable to support the MFP request, including any reasons for denial (if applicable), and provide a copy to the employee.
- I. The employee will send the completed MFP form and their medical certification or Medical Certification Questionnaire (Form CMS-20025Q) to the MFP resource box (MedicalFlexiplace@cms.hhs.gov), or send it via facsimile or mail.
- J. Within three working days of receipt of the required MFP forms and sufficient documentation, the CMS designated management official will render a decision on the MFP request and provide a determination to the employee's manager.
- K. The employee's manager will furnish to the employee a copy of the determination within two working days of the decision. If the request is denied, a reason will be provided.
- L. Employees working MFP must comply with all provisions and employee responsibilities contained in this Article.

Section 10. Accountability

- A. The Parties agree that employees participating in the Agency's telecommuting programs are performing the same duties as their counterparts working in the office. The Agency will use the same performance standards for employees who are telecommuting as are used for employees who perform the same work at the Agency office location.

- B. Managers may exercise the discretion to obtain from employees a summary description of the employee's work performed while telecommuting.

Section 11. Emergency Closing/Late Openings/Early Dismissals

This Section governs all employees with Telework Agreements, whereas, Article 31, Section 10 applies to employees who do not have a Telework Agreement.

- A. Participation in telecommuting programs is voluntary. Employees with a Telework Agreement may be required by the Agency to telecommute at an approved ADS in case of:
 1. A full day building closure;
 2. An early building closure for non-weather related reasons; or
 3. A delayed opening (inclement weather or in other emergency situations).
- B. Employees identified in 11.A. are not eligible to receive administrative leave, except as described in 11.C. or 11.F. They will be expected to either take approved (liberal) leave or complete their entire tour of duty at their ADS, or combination of both. In the case of a delayed opening, employees can complete their full day from the ADS or start the day from the ADS and complete their tours of duty from the building, once open.
- C. When there is an early dismissal due to inclement weather, all employees leaving the building will receive administrative leave.
- D. Employees who would otherwise be required to work under this Section, but were previously scheduled to take leave on the affected day, are not entitled to any administrative leave for the day.
- E. In the case of a pandemic event, building closure, or emergency situation, eldercare or childcare restrictions may be waived for employees who are working from an ADS.
- F. On a case-by-case basis, the Agency may excuse an employee from duty during an emergency situation or weather-related building closure if the employee faces a personal hardship that prevents him or her from working successfully at the ADS (e.g., disruption of electricity, loss of heat, etc.) or if the employee's duties are such that he or she cannot continue to work without contact with the regular worksite.
- G. When a Continuity of Operations Plan (COOP) is declared for the Agency, it supersedes this Article for the impacted location(s). For instance, the Agency may require employees to work at an ADS when a COOP is in effect.

Section 12. Fulltime Telework Program

- A. **Fulltime Telework Program (FTP)**
 1. The FTP will not exceed 20% of the Agency's bargaining unit employees; however, the Agency is not obligated to reach that level of participation.
 2. The FTP will reflect a reasonable representation of the Agency's employees whose work is fully portable across functional lines, levels, and components to effectively measure the benefits for continued expansion.

3. In the event that interest in the program exceeds participation limits, the Agency and the Union will determine selection criteria to equitably select from among qualified candidates and to establish parameters for a wait list queuing process if additional slots become available.
4. All requirements of the telecommuting program under this Article apply to the FTP except those explicitly addressed in this Section.

B. Participant Criteria

1. An employee whose work is determined by the Agency to be 100% portable for the purposes of the FTP. Work will not be reassigned to other employees in order to ensure that interested employees are able to apply to participate in fulltime telework. At any time the individual's work is no longer fully portable, the individual is not eligible to continue in the FTP.
2. Central Office (all Baltimore locations), Regional and Satellite Offices, and Bethesda, MD and Washington, D.C. employees are eligible.
3. Grade levels GS-9 (and equivalent) and above are eligible to participate.
4. Must be an employee for up to one year prior to participation in the FTP.
5. The employee must demonstrate ability to work remotely fulltime in an independent manner such that his/her work is performed seamlessly from a remote location.
6. All employees must demonstrate prior successful participation in a telecommuting program (e.g., SFP).
7. Employees must meet all of the same eligibility criteria as the SFP program, as described in Section 4.
8. Employees are held to the same responsibilities as described in Section 6, plus those additional responsibilities discussed in this Section.
9. Employees with an address of record located 80 miles or more from their assigned Agency office location are subject to additional approval criteria.
10. Must meet Component Head/Consortium Administrator approval.
11. Employees who no longer meet any one of the criteria, requirements, or conditions for FTP will be removed from the program, consistent with the procedures in Section 7.

C. Duty Station

1. The employee's home address provided on the Telework Agreement will become his/her official duty station, and will be used to determine his/her locality pay. Employees should understand that there may be an impact on their locality pay if moving to a new location.
2. Employees may not work at an alternate duty station without prior management approval. At the manager's discretion, he or she may approve a temporary change to an ADS location. However, any permanent change in address will require a new Telework Agreement. Employees who do not receive advance approval for changes to an ADS are subject to discipline and removal from all Agency telework programs.

3. If a participant opts out of or is removed from the FTP, or for some other reason must return to the Agency office location to which they are assigned, the participant has no expectation or right to return to the same work space he/she occupied prior to participation in the FTP. Additionally, there may be a delay in the employee returning to the office location if space is not immediately available.
4. FTP participants must remove their personal property from CMS facilities at their own expense. The Central Office warehouse or Regional/Satellite Office storage rooms will not store any participant's personal property.
5. The Agency will not be responsible for any type of relocation costs as a result of an employee requesting and being approved to participate in the FTP. Nor will the Agency be responsible for relocation costs as a result of an employee's telework participation ending, for any reason.
6. The Agency will provide space for any employee who is required to return to their assigned Agency office location on any given work day. Employees are not guaranteed their previously assigned workspace.

D. Duty Stations Located 80 Miles or More from the Assigned Agency Office Location

1. While the FTP is not intended as approval for employees to move their ADS 80 miles or more from their assigned Agency office location, the Agency recognizes that, on occasion, subject to management approval, this may be a permissible and an acceptable arrangement.
2. Because there are significant budgetary and management concerns with employees living 80 miles or more from their assigned Agency office location, requests from employees currently working or applying for fulltime telework who are applying for a Telework Agreement location 80 miles or more from their assigned Agency office location will be subject to the additional procedures and review criteria in this Section.
3. All employees interested in moving 80 miles or more from their assigned Agency office location are subject to these procedures, regardless of any current or previously approved telework schedule.
4. Telework Agreements and FTP applications with proposed duty station locations 80 miles or more from their assigned Agency office location must be reviewed and approved or denied by the Component Head/Consortium Administrator.
5. Prior to submitting a new Telework Agreement and/or FTP application, an employee will discuss their interest in moving their ADS to a location 80 miles or more from their Agency office location with their immediate manager. The employee must then submit their new Telework Agreement and FTP application through the Agency telecommuting system for review. As part of their request, the employee will submit a cost analysis using the telecommuting system. (See attached form.)
6. Requests for duty station locations 80 miles or more from the Agency office location will be subject to additional criteria and considerations, such as travel costs, Agency budget, anticipated continued portability of work, etc.
7. Employees approved to move to a location 80 miles or more from the Agency office location must attest that they understand the implications of moving to the new location.

E. **Supplies and Correspondence**

1. Components are encouraged to provide supplies to participants prior to the start of FTP. Appropriate supplies would include paper, folders, pens, and pencils. Office furniture and equipment (e.g., printers and printer cartridges) are not considered supplies under this Agreement and will not be provided by the Agency.
2. FTP participants may order supplies through their components' regular supply requesting procedures. CMS will not ship supplies to the FTP participant's duty station. However, FTP participants may elect to pick up supplies at their CMS office (at their own expense) or pay to have such supplies mailed to him/herself.
3. In accordance with Article 35, employees must not use non-government furnished equipment, software, applications, and online services to conduct Agency business. However, under this Article, to the extent required to perform their work, employees must furnish their own printers and other equipment provided the employee obtains approval (via a request to the IT Service Desk) to use such equipment. Employees may also use their own telephones for making calls.
4. All official government mail must be processed through the CMS mailroom and is the property of CMS.
 - a. Employees may not have official government documents mailed directly to their official duty location. Additionally, no original hard copy records may be stored at the official duty station. All official government records must be maintained at the official Agency assigned office location.
 - b. Mail may be securely faxed to the employee's Agency-issued fax number (e.g., through secure fax software) or scanned, encrypted, and emailed to the CMS-issued email address.
 - c. Employees also may not mail official government documents from their offsite location to a third party.

F. **Tour of Duty**

The tour of duty for the FTP will be the same as that established in accordance with Article 10, Hours of Work, of the MLA.

G. **IT Support**

1. Employees will use CMS-issued IT hardware (i.e., laptop computer) and software (e.g., software for printing), and be provided with support through the IT Service Desk in the same way as if they were in the office.
2. If an employee has an IT issue that cannot be resolved remotely, an employee whose home duty station is less than 80 miles from an Agency office location will be responsible for bringing the equipment in for resolution.
3. If the employee's official duty station is 80 miles or more from an Agency office location, the hardware must be mailed in to the closest CMS office for repair or replacement at the Agency's expense (CMS will provide postage paid packaging). To ensure a continuous work flow during the repair of an employee's equipment, the Agency will ship replacement hardware overnight to the employee's official duty station. If the

employee does not have work that can be accomplished at their official duty station, they may be required to take leave while waiting for the replacement equipment to arrive.

4. CMS will not provide on-site or at home technical support other than telephone technical guidance.
5. The employee must maintain his/her own phone line, internet connections, and required equipment at the employee's own expense.
6. FTP participants must use any available telephone technology, including call forwarding, provided by the Agency. Where such technology is not available, FTP participants are required to provide a contact phone number to their CMS Access Administrators (CAAs), which will be added to the Global Address List (GAL) and made available to internal and external colleagues.

H. Reasonable Accommodations

FTP participants who have existing reasonable accommodations or wish to request reasonable accommodations have the same opportunity as all other employees to make such requests following the procedures in Article 18.

I. Travel

1. Entitlement to travel expenses is calculated based on the employee's official duty station (home).
2. All authorized local and long-distance travel expenses will be paid in accordance with Article 8 and government-wide rule and regulation.

J. Solicitation of Applicants

1. Bi-annually (e.g., April and September), an Agency-wide broadcast will be sent to all employees regarding the opportunity to apply for FTP, unless otherwise agreed to by the Parties. The broadcast will inform employees about the details of the FTP, the application process, eligibility criteria, and approval process.
2. The application process will be open for approximately 10 working days.
3. At the discretion of a Component Head/Consortium Administrator, an application may be reviewed outside the bi-annual approval period (e.g., based on a hardship request), and such decisions will be made on a case-by-case basis.
4. The Union's Principal Designee will be notified of all FTP approvals that are granted outside of the bi-annual approval period within five working days. Such notifications will include the approval reasons.

K. Selection Criteria and Application Process

1. Employees must submit their request to participate in the FTP in the Agency's online telecommuting system. Verbal applications are not acceptable, and will not be approved by any Agency management official. Applicants must meet the eligibility criteria outlined in Section B above.
2. The manager, in consultation with a higher-level management official, will assess each application based on any potential impact, impact to customer service, if the applicant's work is portable, the criteria outlined in this Article, and an objective business analysis to

ensure the Agency's mission may still be accomplished. By submitting his/her application, each applicant acknowledges he/she will follow all CMS rules and regulations, and agrees to comply with the Employee Responsibilities described in this Article.

3. The employee's immediate manager will recommend approval or disapproval of each applicant for consideration in the FTP. He/she does not have the authority to approve participation in the FTP.
4. The Union's Principal Designee will be provided a report which lists applicants by grade, component, position, office location, and if approved for consideration by the employee's immediate manager. The Agency will give the Union three working days from receipt of the report to provide the Union an opportunity to provide input regarding the applicants for the FTP. The Agency will give genuine consideration to the Union's input.

L. Telecommuting Program Assessment and Determination for Continued Expansion

1. In order to determine the effectiveness, progress, and productivity of the FTP, participants will be surveyed to assist the Agency in determining the feasibility of maintaining and/or expanding the program.
2. This assessment will consider and evaluate productivity, communication with internal and external customers, IT support, equipment efficiency, employee and manager morale, and cost effectiveness.
3. The Parties will take into consideration the impact of the FTP on all employees, including those not directly participating in the program as well as on internal/external stakeholders.

M. Miscellaneous

1. All FTP participants are subject to all provisions of the MLA. Performance issues and/or conduct issues by participants will be addressed in the same manner as for other employees.
2. A participant may be removed from the FTP in accordance with this Article for the same reasons an employee working Scheduled Flexiplace (SFP) may be removed from SFP, in addition to not meeting the requirements and criteria outlined in this Section.
3. Participants may be directed to report to their office at the Agency's expense. Normally, at least 48 hours' notice will be given.
4. For the purpose of attending group meetings, employees participating in the FTP will be treated as equitably as possible regardless of distance from the assigned Agency office location.
5. FTP employees who wish to work in the assigned Agency office location on a particular day at their own option (i.e., not directed/requested by his/her manager or the Agency), may do so at their own expense, with management concurrence.
6. All requirements of this Article continue to apply unless expressly superseded by the terms of this Section. Any employee who fails to meet those requirements will be removed from the FTP.

7. Employees recognize that by agreeing to participate in the FTP they are certifying that their work is fully compatible with being offsite 100% of the time and that they are able to fully accomplish their responsibilities remotely. Participating employees will not request others who remain physically in the office to accomplish tasks which are the responsibility of the FTP employee.
8. If an employee participating in the FTP leaves CMS permanently, they must return all government-issued equipment and property, including, but not limited to, laptops, iPhones, PIV cards, etc. All such items must be brought or mailed to the nearest Agency office location. CMS may pursue debt collection against any employee who fails to return any Agency-provided equipment.

Attachments:

Telework Agreement

Episodic Flexiplace Request Form

Scheduled and Fulltime Flexiplace Request Form

Cost Analysis Tool

Medical Flexiplace Request Form

Medical Certification Questionnaire In Support of Medical Flexiplace Request

Centers for Medicare & Medicaid Services

TELEWORK AGREEMENT

This Telework Agreement between the Centers for Medicare & Medicaid Services (Agency) and _____ (Employee) describes the terms and conditions of participation in the Agency’s telecommuting programs.

REQUEST

I hereby request a Telework Agreement with the Agency. I understand that I may cancel this voluntary agreement at any time, but will not be eligible for another Telework Agreement for a period of 12 months following the cancellation date.

I understand that I may not work at an alternative duty station (ADS) until a Telework Agreement has been approved by a management official and I have completed all required telework training. Once I am telework ready, I will then use the Agency’s online telecommuting system to request participation in any of the Agency’s telecommuting programs and I may not work at an ADS until my requested schedule has been approved.

I am requesting that the following location be my ADS (for episodic, scheduled, or medical flexiplace) or official duty station (for fulltime telework) under this Agreement and agree that I may not telecommute from any other location without management approval:

ADS Address:

ADS Telephone Number:

Position: _____

Component (Branch or Division/Group/Office, Center, or Consortium):

I understand that this Telework Agreement is automatically terminated upon any permanent change in the above provided address or position. I agree to submit, for review and approval, a new Telework Agreement with updated address and/or position information.

Fulltime Telework (Only)

Select one:

- This location is less than 80 miles from my assigned Agency office location.
- This location is 80 miles or more from my assigned Agency office location.

I understand I will be subject to additional procedures and review criteria (e.g., cost analysis) as described in Article 29, Section 12.D., if my requested location is 80 miles or more from my assigned Agency office location.

CONDITIONS OF AGREEMENT

1. I agree to adhere to all requirements and conditions of Article 29 of the Agency's Master Labor Agreement. I will familiarize myself with Article 29.
2. My participation in telework is subject to change based on the factors and conditions in Article 29.
3. I will follow Agency time and attendance and leave policies as though I were at the Agency office location.
4. I will promptly inform my manager whenever problems arise that adversely affect my ability to perform work.
5. I shall adhere to the Standards of Conduct for Executive Branch Employees and any other Agency policies while working at the ADS.
6. I will not request others who remain physically in the office to accomplish tasks which are my responsibility.
7. I will not engage in any non-governmental activities while in an official duty status at the ADS. This includes caring for a child or providing elder care or conducting personal business except as provided for in Section 11 of Article 29.
8. I will keep this Telework Agreement up to date and will not change my location without advance management approval.
9. I will check in/check out via email (or telephone, if email is not available due to technical issues) at the beginning/end of the work day with my manager. If earning credit hours at the ADS, I will also check in/check out at the beginning/end of the credit hour period.
10. I will provide a designated work area at the ADS adequate for the performance of my official duties.
11. I will maintain a telephone, at my own cost, and will furnish my manager, co-workers, and internal customers with the telephone number so that during regular working hours, I am fully accessible to my manager, co-workers, and internal customers.
12. I will maintain internet access (except dial-up).
13. I will ensure that communication with external partners will be seamless while I am teleworking. I will make arrangements to be responsive to external partners at no additional cost to the Agency.
14. I will check my Agency assigned voicemail as often as required to successfully perform my assigned duties, but no less than twice during the work day, to respond to inquiries from external customers, except where otherwise directed by my manager.
15. I will furnish and maintain all equipment deemed necessary by my manager to perform at my location.

- 16. I agree to use the Agency-assigned laptop at my location for the completion of work while teleworking, except where otherwise agreed to by my manager in advance.
- 17. I will read and sign any Agency-required safety checklists. My location has a smoke detector and readily accessible fire extinguisher.
- 18. I will permit the Agency to inspect my location during my regular working hours to ensure proper maintenance of Government-owned property and conformance with safety standards. The Agency will give at least a two hours' notification prior to the inspection.
- 19. I will assure that if any Government-owned equipment is used at my location, it will be used only for authorized purposes.
- 20. I will follow standard security procedures when removing official records from the assigned Agency office location. I will assure that records and files are secure in order to protect against unauthorized access or disclosure.
- 21. I will be liable for damage to any Government-supplied property, including equipment at my location, in the same way I may be held liable at the assigned Agency office location. If Government-supplied property is damaged, I will return it to an Agency office location for repair or service.
- 22. I agree that I am responsible for all operating costs, home maintenance, and any other incidental costs (e.g., utilities, internet, cellular, long distance costs) associated with the use of my home for business purposes.
- 23. I will safeguard Agency equipment, and sensitive, Privacy Act, or proprietary information that is accessed at my location. Sensitive, Privacy Act or proprietary information includes, but is not limited to, individually identifiable information such as names, addresses, social security numbers, and health insurance claim numbers of Agency beneficiaries, medical or other personal Agency beneficiary information, personnel information, and individually identifiable financial information.
- 24. As specified in Article 35, I may be required to use specific technology or software (e.g., software for collaboration and communication, such as video, instant messaging, document sharing, etc.), to perform Agency work, participate in training, and/or attend meetings.
- 25. I will not use Outlook "out-of-office" messaging on days I am working at the ADS.
- 26. If my employment with CMS ends, I am responsible for returning all government-issued equipment and property, including, but not limited to, laptops, iPhones, PIV cards, etc. CMS may pursue debt collection procedures against me if I fail to return any Agency-provided equipment.
- 27. I understand I may be required by the Agency to work during building closures as outlined in Article 29, Section 11. Such building closures may be due to inclement weather, building renovations, emergencies, or when the Agency is operating under a Continuity of Operations plan (COOP).

I hereby certify that I have read and understand this Agreement and agree to adhere to all requirements above, as well as the full Master Labor Agreement.

Employee's Signature: _____ **Date:** _____

First-Line Supervisor

Approve

Disapprove

Reason for disapproval (if applicable): _____

Signature _____ **Date:** _____

Center/Office Director/Consortium Administrator (if required)

Approve

Disapprove

Reason for disapproval (if applicable): _____

Signature: _____ **Date:** _____

EPISODIC FLEXIPLACE REQUEST

Name: _____ CO/RO Component: _____

Dates	Starting Time	Ending Time

Will ADS location be the same as the address on the Telework Agreement? If not, state requested address: _____

Description of Assignment:

I hereby certify that I have read Article 29 and understand the eligibility requirements and employee responsibilities, and agree to follow the terms and conditions set forth in my approved Telework Agreement, as well as the requirements of the Master Labor Agreement. I agree that failure to comply with my approved Telework Agreement and Article 29, or changes in my eligibility, may result in my removal from telework and/or the termination of my Telework Agreement.

Electronic Signature of Employee

Date

_____ Approved

_____ Disapproved

Signature of Management Official

Date

SCHEDULED AND FULLTIME FLEXIPLACE REQUEST FORM

Name: _____ CO/RO Component: _____

SECTION A: SCHEDULE REQUEST

Current Work Schedule (circle one): 8½-hour 9½-hour 10 ½-hour

Requested telework schedule:

1 day per week

2 days per week

3 days per week (only available for 8½-hour employees)

5 days per pay period (no more than 3 days per week and only available for 9½-hour employees)

Fulltime

Specific day(s) requested:

Week 1: Monday Tuesday Wednesday Thursday Friday

Week 2: Monday Tuesday Wednesday Thursday Friday

Statement of proposed assignments at ADS (for SFP only):

Applicants requesting fulltime telework continue to Section B. Applicants requesting scheduled telework may skip to Section D.

SECTION B: ADDITIONAL INFORMATION FOR EMPLOYEES REQUESTING FULLTIME TELEWORK

1. Explain how your work can be completed entirely remotely:

2. Explain how you will be able to maintain seamless communication with your manager, colleagues, and internal and external customers from your ADS location:

Applicants whose intended telework location is 80 miles or more from their assigned Agency office location continue with Section C. All other applicants may skip to Section D.

SECTION C: EMPLOYEES REQUESTING FULLTIME TELEWORK FROM A LOCATION THAT IS 80 MILES OR MORE FROM THE ASSIGNED AGENCY OFFICE LOCATION

__ I have completed and am submitting the *Cost Analysis Tool* with this application. I understand that management may consider cost to the Agency, among other factors, in determining whether I will be permitted to have a fulltime duty station that is 80 miles or more from my assigned Agency office location.

__ I have also submitted an updated Telework Agreement.

__ If approved, I attest that I understand the implications of moving to the new location. For instance, should my eligibility change, including the portability of the work, I would be required to return to my previous Agency office location. All costs associated with returning to the previous Agency office location would be my responsibility.

SECTION D: CERTIFICATION

__ I hereby certify that my Telework Agreement on record is accurate and up-to-date (including my address, telephone number, and position). I have read Article 29 and understand the eligibility requirements and employee responsibilities, and agree to follow the terms and conditions set forth in my approved Telework Agreement as well as the requirements of the Master Labor Agreement. This includes working only at the alternative duty station/official duty station identified in my approved Telework Agreement, unless otherwise approved in advance by my manager. I otherwise meet all of the eligibility requirements for the requested schedule. I agree that failure to comply with my approved Telework Agreement and Article 29, or changes in my eligibility, may result in my removal from telework, a change in my telework schedule, and/or the termination of my Telework Agreement.

Signature of Employee

Date

SECTION E: MANAGEMENT DECISION

First line supervisor decision for scheduled telework requests:

Approve Disapprove

Reason for disapproval (if applicable): _____

Signature: _____ **Date:** _____

First line supervisor recommendation for fulltime telework requests:

Approve Disapprove

Reason for recommending disapproval (if applicable): _____

Signature: _____ Date: _____

Center/Office Director/Consortium Administrator decision for fulltime telework requests:

Approve Disapprove

Reason for Disapproval (if applicable): _____

Signature: _____ Date: _____

COST ANALYSIS TOOL

This Cost Analysis Tool will be used to analyze the costs or savings of a proposed telework location 80 miles or more from the assigned Agency office location, provide justifications for such arrangements, and document the approval or disapproval of the request.

Part A. Employee Data

1. Employee Name: _____
2. Component: _____
3. Position: _____
4. Supervisor: _____

Part B. Locality Pay Calculations

1. Assigned Agency office location: _____
2. Proposed telework location: _____
3. Assigned Agency office location salary (annual rate from salary tables): <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2017/general-schedule/> \$ _____
4. Proposed ADS location salary (annual rate from salary tables): <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2017/general-schedule/> \$ _____
5. Subtract line 3 from line 4 (i.e., Line 4 minus Line 3). A positive value indicates that the salary would increase at the proposed ADS location. A negative value indicates that the salary would decrease at the proposed ADS location. \$ _____

Part C. Estimated Travel Budget Development for Two One-Night Trips per Year

1. Round trip transportation cost per trip to travel to assigned Agency office location:
 Air Train POV mileage/____miles Other, specify:_____ \$ _____
2. Meals and Incidentals (M&IE) cost per day to travel to assigned Agency office location (from per diem chart): <https://www.gsa.gov/portal/content/104877> \$ _____
3. Hotel cost per night at assigned Agency office location (maximum amount from the per diem chart): <https://www.gsa.gov/portal/content/104877> \$ _____
4. Add Lines 2 and 3 for the combined hotel and M&IE cost per day: \$ _____
5. Additional estimated costs per trip, if any, while on travel to assigned Agency office location (e.g., car rental, taxis or shuttles, parking): \$ _____
6. Total cost per one night trip to assigned Agency office location. Add Lines 1, 4, and 5:
\$ _____
7. Annual estimated cost to travel to assigned Agency office location. Multiply Line 6 times 2:
\$ _____

Part D. Total Cost to Government

Estimated overall cost of the arrangement. Sum Line B.5. and Line C.8: \$ _____

MEDICAL FLEXIPLACE PROGRAM (MFP) REQUEST

PART I - EMPLOYEE’S REQUEST

Employee’s Name	Manager’s Name
Center/Office/Region	

I am requesting to perform work at home because of my temporary personal illness or injury from ____ to ____
Beginning date
 ____ for a medical condition that would not preclude me from performing my official duties at home but:
End date

- prevents me from commuting to my official duty station, and/or
- makes it difficult or impossible for me to perform an entire day’s work at my official duty station.

Note: The required medical certification in support of this request has been provided (see Article 29, Section 9.D.).

- Submitted medical documentation under separate cover to the CMS Medical Flexiplace Program
- Attached

In the space provided below, please provide your reason for requesting Medical Flexiplace:

Please list the official duties that you believe you can perform at home during the period requested:

YOU MAY NOT BEGIN TO WORK UNDER THE MEDICAL FLEXIPLACE PROGRAM UNTIL YOU RECEIVE NOTIFICATION FROM YOUR IMMEDIATE MANAGER THAT YOUR REQUEST HAS BEEN APPROVED.

I agree and acknowledge that the attached/submitted medical information may be released to any CMS officials on a need-to-know basis, to carry out their official duties.

Employee’s Signature	Date
<i>Manager’s Signature (Manager’s signature indicates that the employee’s work is portable.)</i>	Date

Upon receipt from the employee, the immediate manager must forward this form and any supporting medical documentation to the CMS Medical Flexiplace Program at MedicalFlexiplace@cms.hhs.gov.

PART II - OEOCR CLEARANCE OF MEDICAL DOCUMENTATION

Cleared

Not cleared for the reasons stated below:

--

OEOCR Director/Deputy Signature	Date
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PART III - FINAL DECISION

Approved

Denied for the reasons stated below:

--

Manager's Signature <i>(Manager's signature indicates final decision of approval/denial.)</i>	Date
---	------

This form and accompanying documents contain Personally Identifiable Information (PII), sensitive medical and/or other information protected by a right to privacy. When transmitting this document, please use a secure fax or utilize proper encryption techniques.

Form CMS-20025 (3/22)

**MEDICAL CERTIFICATION QUESTIONNAIRE
IN SUPPORT OF MEDICAL FLEXIPLACE REQUEST**

PHYSICIAN OR HEALTH CARE PRACTITIONER

Full Name	
Office Name	
Address	Phone

PATIENT

Full Name

To support the medical flexiplace request, there must be administratively acceptable medical certification. To be administratively acceptable, the medical information must include, at a minimum, the following information:

1. What is the specific nature of the illness or injury (i.e., surgery, fracture)?

2. What are the anticipated beginning and ending dates of the Incapacitation?

Anticipated beginning date	Anticipated ending date
----------------------------	-------------------------

3. What is the date that the employee is able to begin working MFP?

Date employee may begin working MFP

4. The specific reason(s) why the employee is incapable of commuting to the official duty station and/or performing her/his duties at the official duty station for an entire day (i.e., cannot drive, cannot sit upright or stand for prolonged periods).

5. A statement that the employee is capable of working at home, subject to any specific limitations. THIS SECTION MUST BE COMPLETED IN ORDER TO PROCESS REQUEST.

The above-named employee:

is

is not

capable of working at home full time.

Subject to the following limitations (if no limitations, enter "n/a").

Physician's or Health Care Practitioner's Signature	Date
---	------

(NOTE: Once completed and signed, this questionnaire may be attached to the physician's letterhead.)

Article 30: Official Time for Union Representatives

Section 1. Definitions

For purposes of this Article, “official time” means time granted by the Agency to employees designated in writing to act as Union representatives, without charge to leave, in accordance with 5 U.S.C. § 7131.

Section 2. General Requirements

- A. All Union representatives are accountable to the Agency and the taxpayers for the expenditure of funds associated with the use of official time in accordance with the provisions of this Article.
- B. All Union representatives are expected to perform the duties of the Agency position to which they are assigned when not on approved official time.
- C. In accordance with the law, employees will not be penalized (e.g., performance ratings, awards, promotions) for using official time in accordance with the terms of this Agreement.
- D. Credit hours, overtime, or compensatory time may not be earned by Union representatives while on official time.
- E. Union representatives are not eligible for any of the Agency’s telecommuting programs, as defined in this Agreement, while on official time (i.e., while performing Union representational duties and not Agency work).
- F. Union representatives may not be evaluated on, or rewarded for, activities performed while on official time.
- G. In accordance with 5 U.S.C. § 7131(b), no official time may be expended for any activities performed by employees relating to internal Union business (including the solicitation of membership, election of Union officials, and collection of dues).

Section 3. Employees Eligible for Official Time

- A. In order to efficiently and effectively work with the Agency on initiatives and other matters affecting working conditions, the Agency recognizes one full-time Union representative. The Union will provide the name of the full-time Union representative to the Agency.
- B. The Agency recognizes 37 designated Union representatives as eligible for official time. The Union will provide the Agency with a written list of all designated representatives and written updates to the list as they occur. Any Union representative not designated in writing by the Union in this manner will not be recognized by the Agency as eligible for official time.

Section 4. Amount of Official Time

The Union will be provided 9,000 hours for all official time activities in a calendar year. This includes official time authorized pursuant to 5 U.S.C. §§ 7131(a), (c) and (d), with the following exception. If the bank of 9,000 hours is exhausted prior to the end of the calendar year, the Union shall receive whatever additional hours are required to fulfill its entitlements under 5 U.S.C. §§ 7131(a) and (c) of the Statute. No Union representative may use more than 50% of their regular working hours for the calendar year (i.e., 1,040 hours) for official time activities, unless covered by Section 3.A or other written agreement. Official time may be authorized provided sufficient representational activities exist, the amount of time requested is reasonable, and each Union representative complies with the official time requesting/approval procedures outlined below.

Section 5. Official Time Requesting, Approval, and Recording Procedures

- A. All Union representatives must report to their Agency workstation at the beginning and end of their regular working schedule, unless an exception is requested and approved in advance.
- B. Union representatives may not use official time at their Agency workstation.
- C. A Union representative planning to use official time will, in advance of such usage, request and receive approval from his or her manager to be released from duty to perform Union representational duties. Retroactive approval will be granted when appropriate. The Union representative may request this approval in person or via an email communication to his or her manager. The request should include the nature of the planned representational activity, the actual or estimated amount of time needed for this representational activity, estimated departure and return time, destination, and phone number.
- D. The manager will promptly consider the request and will grant the request unless the manager determines the Union representative's presence at his/her work site is necessary to meet Agency work requirements. If the manager determines the Union representative's presence is necessary to meet Agency work requirements, the manager will ensure that, within one work day, an alternate time will be permissible for use of the requested official time.
- E. Once the official time use is concluded, the Union representative will complete the portion of the official time record that includes return time and cumulative time used for the representational activity. If more than one representational activity is performed on a particular date, the specific amount of time spent for each activity should be included on the official time record. When submitting a report, the Union representative will specify the type of activity performed by referencing which one of the 18 covered activities, as outlined in Section 6 below, or that no official time was used during that period of time.
- F. The official time record will be maintained at the employee's workstation and available and readily accessible for review by his or her manager at all times.
- G. The completed official time record will be signed by the Union representative and submitted to the Union representative's manager on a monthly basis, normally by the 9th of the month. An electronic signature is acceptable.

Section 6. Authorized Representational Activities

- A. For the purpose of this Article, “representational activities” means those authorized activities undertaken by designated Union representatives on behalf of other employees or the Union pursuant to representational rights under the terms of 5 U.S.C. § 7131 and this Agreement. Examples of activities for which official time will be authorized include:
1. Negotiations, including preparation time;
 2. Attendance at formal discussions between one or more representatives of the Agency and one or more representatives in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment covered by 5 U.S.C. § 7114 (a)(2)(A);
 3. Any statutory appeal proceeding or other forum in which the Union is representing an employee or the Union pursuant to its obligations under relevant contract provisions, regulations, or law;
 4. Grievance meetings and arbitration hearings, including preparation time;
 5. EEO complaint settlements, and administrative and/or court hearings if a complaint is processed under the negotiated grievance procedure;
 6. Adverse action or performance-based action oral reply meetings, if the Union is designated as representative of the employee, including preparation time;
 7. Any meeting for the purpose of presenting reconsideration replies in connection with the denial of within-grade increases, if the Union is designated as representative of the employee;
 8. Attendance at an examination of an employee who reasonably believes he or she may be the subject of a disciplinary or adverse action and the employee has requested representation pursuant to 5 U.S.C. §7114(a)(2)(B) (i.e., “*Weingarten*” meetings);
 9. Conferring with affected employees about matters for which remedial relief is available under the terms of this Agreement;
 10. Preparation of reports, forms, and documents required by law or regulation concerning the proper operation and administration of a labor organization;
 11. Effectuating contacts with members of Congress and their staffs on behalf of the Union;
 12. Attendance at meetings of committees on which Union representatives are authorized membership by the Agency or this Agreement;
 13. Maintenance of Union office hours (the Union agrees to rotate Union office hours among representatives);
 14. Attendance at regularly scheduled Union events of which the Agency is notified in advance, such as Union-sponsored training designed primarily to further the interests of the Government by improving the labor-management relationship. Notification to the Agency’s designated Labor Relations Officer will include a copy of the event’s agenda or other literature that allows the Agency to

differentiate between legitimate official time activities and non-legitimate official time activities (e.g., internal Union business, social events);

15. Conducting training on labor relations issues for employees not to exceed two hours quarterly (non-cumulative);
16. Attendance at Agency-recognized activities to which the Union has been invited;
17. Travel to any of the activities listed above; and
18. Any other representational activity authorized by 5 U.S.C. Chapter 71 (e.g., 7114(b)(4) request, Freedom of Information Act (FOIA) request, research and informational meetings, etc.).

Section 7. Abuse of Official Time

The Parties recognize the seriousness of allegations of abuse of official time by Union representatives. The Agency will take appropriate action when such abuse occurs.

Section 8. Zero Cost Travel

- A. Union representatives traveling while on official time are covered for Worker's Compensation.
- B. Union representatives must submit a request for official time in advance to be covered for Worker's Compensation in lieu of entering a travel authorization into the Agency's electronic travel system.
- C. Union representatives will not use their Government contractor-issued travel charge card for zero cost travel.

**Centers for Medicare & Medicaid Services
Official Time Report**

Name of Union Representative

Month/Year

Date	Representational Activity (If there is more than one representational activity performed on a particular date, list each activity and the amount of time spent for each activity)	Destination and Phone Number	Departure Time	Return Time	Cumulative Time Used (If there is more than one representational activity performed on a particular date, list each activity and the amount of time spent for each activity)

*The Union representative will, before leaving his/her Agency workstation for representational activities, request and receive approval from his/her manager in person or by email.

*This form will be maintained at the employee's workstation and readily available and accessible for review by his/her manager at all times.

Employee (Union Representative) Signature

Date

Supervisor Signature

Date

Article 31: Time and Leave

Section 1. General Policies

- A. Employees will be entitled to accrue and use leave in accordance with law, Government-wide rule and regulation, and the provisions of this Article.
- B. Employees are expected to apply in advance for approval of all anticipated leave. Employees must use the online electronic procedures for requesting and seeking approval for leave. However, under certain circumstances, managers may require that an employee submit an OPM Form 71 (or equivalent request for leave) (e.g., when the employee is out on unscheduled extended leave, when the employee is required to provide medical certification documentation, when the employee is on travel, or when the employee does not have access to Agency's electronic time and attendance system).
- C. The leave approving official agrees to respond to all leave requests in a timely manner.
- D. When an employee has not received advance approval for leave and does not report to work, the employee must, by the latest allowable arrival time depending on the employee's official duty station and work schedule, take one of the following actions:
 - 1. Speak directly to his/her leave approving official. If the leave approving official is unavailable, the employee must leave a phone message and telephone number where the employee can be reached in the event the leave approving official needs to contact him/her about the leave requested or an immediate or pressing operational work requirement; or
 - 2. Send the leave approving official an email. The email will include a telephone number where the employee can be reached in the event the leave approving official needs to contact him/her about the leave requested or an immediate or pressing operational work requirement.

The leave approving official will approve or deny the leave requested. In the event the employee does not take one of the above actions by the required time, the absence may be charged as absent without leave ("AWOL").
- E. When an employee returns to duty from an unscheduled absence, he/she must submit a leave request in the Agency's current electronic time and attendance system no later than close of business the day of return to duty. Failure to submit a leave request may result in the absence being charged to AWOL.
- F. All absences will be charged in increments of ¼ hour.
- G. Employees are responsible for verifying that their leave balances are accurate on their HHS "Civilian Leave and Earnings Statement" regularly. If the employee finds a discrepancy, she/he must contact her/his timekeeper and provide him/her with a copy of the leave and earnings statement.

Section 2. Annual Leave

- A. Annual leave is provided and used to allow employees an annual vacation of extended leave for rest and recreation and to provide periods of time off for personal and

emergency purposes. The use of accrued annual leave is the right of the employee, subject to the right of the Agency to approve the time at which leave may be taken. Employees must apply in advance for approval of all anticipated leave to permit the orderly scheduling of leave and to avoid leave forfeiture.

- B. Leave requested in advance will be granted except when the manager determines that operational needs or requirements would preclude the granting of the leave for the time requested. Leave may also be granted when it is not requested in advance unless an immediate or pressing operational need or work requirement would preclude the granting of leave for the time requested.
- C. When “use or lose” leave is scheduled in the Agency’s current time and attendance system before the start of the third biweekly pay period prior to the end of the leave year and cannot be approved or used prior to the end of the leave year, the excess annual leave will be restored in accordance with law or Government-wide rule and regulation and carried over into the next leave year.
- D. The leave approving official should request at the earliest possible time, an advance schedule for leave for periods of high annual leave usage and/or anticipated heavy workload. Leave approval/denial should be provided within 10 working days after the request is received by the leave approving official. Scheduling conflicts will be resolved by the leave approving official.

Section 3. Sick Leave

- A. The use of sick leave is an employee benefit. In accordance with 5 C.F.R. Part 630.401, the Agency will grant sick leave to an employee when the employee meets one of the following conditions:
 1. Employee receives medical, dental, or optical examination or treatment;
 2. Employee is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth;
 3. Employee provides care for a family member or domestic partner* who is incapacitated as a result of physical or mental illness; injury; pregnancy; childbirth; or who receives medical, dental, or optical examination or treatment (see Section 4.A. for limitations regarding the use of sick leave for family care);
 4. Employee makes arrangements necessitated by the death of a family member or attends the funeral of a family member;
 5. Employee would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease; or
 6. Employee must be absent from duty for purposes relating to the adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

*Domestic partner means an adult in a committed relationship with another adult, including both same-sex and opposite-sex relationships. Committed relationship means one in which the employee, and the domestic partner of the employee, are each other's sole domestic partner (and are not married to or domestic partners with anyone else), and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a State or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union).

- B. Employees may be required to furnish medical certification to substantiate a request for approval of sick leave that exceeds three consecutive work days or when the leave approving official has reason to believe that the employee is not entitled to sick leave.
- C. When requested, an employee will provide written medical certification to the Agency in a timely manner, but no later than 15 days of the request. If the employee fails to provide the required medical documentation within the 15-day time period, the employee's sick leave request may be denied. Extensions of the 15-day time period may be granted where the manager determines the particular situation warrants an extension. Medical certification for sick leave, at minimum, should:
 1. Be on the physician's letterhead and include a medical provider's signature and date;
 2. Provide the dates that the employee's physician determines that the employee will need to be out due to illness or injury; and
 3. Provide the specific reason(s) that the employee is unable to work during the time requested (i.e., what is it about the illness or injury that makes the employee unable to work, e.g., can't drive, sit, or stand, use of medications, etc.) and when will the employee be expected to return to work.

To demonstrate the above, the medical certification might include such things as a current clinical status to explain the reason for the absence; plans for future treatment; and an estimate of the expected date of full or partial recovery in order to determine when he/she will return.

When appropriate, an independent, appropriately qualified, licensed physician (e.g., a Federal Occupational Health physician) will, at the Agency's expense, review the medical documentation to determine whether or not the medical documentation is adequate or to make other determinations as necessary. If it is the opinion that such medical documentation is not adequate, the employee will be advised as to what additional documentation is necessary.

- D. An employee who expects to be absent more than one day will inform the leave approving official of the expected date of return to duty. In such cases, daily contacts with the leave approving official may not be required. However, the employee must leave a phone number where he/she can be reached in the event the leave approving official needs to contact him/her about an immediate or pressing operational work requirement. In the case of an extended illness (including use of sick leave for family care and bereavement purposes and leave under the Family and Medical Leave Act (FMLA)), the

employee will inform the leave approving official as soon as he/she becomes aware of an expected return to duty date.

- E. Employees, upon request and with the approval of the leave approving official, may change previously-authorized annual leave, credit hours, or leave without pay to sick leave if the requirements for usage of sick leave are met.

Section 4. Sick Leave for Family Care and Bereavement Purposes

- A. In accordance with 5 C.F.R. Part 630.401, a full-time employee may use up to 104 hours (13 work days) of his/her accrued sick leave in a leave year for general family care purposes (general family care purposes means that the employee is providing care for a family member or domestic partner who is incapacitated as a result of physical or mental illness; injury; pregnancy; childbirth; or who receives medical, dental, or optical examination or treatment), including making arrangements for or attending the funeral of the following family members:
 1. Spouse (to include a same sex spouse) and parents thereof;
 2. Sons and daughters, and spouses thereof;
 3. Parents, and spouses thereof;
 4. Brothers and sisters, and spouses thereof;
 5. Grandparents and grandchildren, and spouses thereof;
 6. Domestic partners and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of this section; and
 7. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- B. The amount of leave that can be used for the purposes stated in Section 4.A. of this Article by part-time employees is the number of hours of sick leave he or she normally accrues during a leave year.
- C. An employee who is caring for a family member or domestic partner with a serious health condition may use a total of up to 12 weeks (480 hours) of sick leave during a leave year.
 1. For part-time employees, the amount of sick leave available to care for a family member or domestic partner with a serious health condition is equal to 12 times the average number of hours in the employee's regularly-scheduled tour of duty. For example, an employee who works 20 hours a week would be allowed to use up to 240 hours of sick leave per leave year for a **seriously** ill family member.
 2. If, at the time an employee uses sick leave for a family member's or domestic partner's serious health condition, the employee has used during that leave year any portion of the 104 hours of sick leave allowable for general family care purposes stated in Section 4.A. of this Article, the amount used must be subtracted from the maximum number of allowable sick leave hours (480). This will determine the total amount of sick leave that may be used during the remainder of the leave year for a family member with a serious health condition.

3. An employee may not use more than 12 weeks (480 hours) of sick leave each leave year for all family care purposes. Consequently, if an employee previously used 12 weeks of sick leave to care for a family member or domestic partner with a serious health condition, he/she cannot use any additional sick leave under the general family care provisions as noted above.
- D. For a family member's or domestic partner's serious health condition, an employee will provide written medical certification to the Agency, along with an OPM Form 71 leave request form, in a timely manner, but no later than 15 days of the Agency's request for such documentation. If it is not practicable under the particular circumstances to provide the requested medical certification no later than 15 calendar days after the date requested by the Agency, despite the employee's diligent, good faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the Agency requests such medical certification. If the employee fails to provide the required medical documentation within the specified time period, the employee will not be entitled to sick leave. Medical certification for this leave will include all of the requirements contained in Section 3.C. above as they would pertain to the family member or domestic partner. The Agency may require an employee to provide an additional written statement certifying that the family member or domestic partner requires psychological comfort and/or physical care; the family member or domestic partner would benefit from the employee's care or presence; and the employee is needed to care for the family member or domestic partner for a specified period of time.

Section 5. Sick Leave Restriction

- A. Managers may place employees on sick leave restriction. When an employee is placed on sick leave restriction, his/her use of sick leave is restricted. In order to place an employee on sick leave restriction, the leave approving official must issue a written set of procedures or arrangements that the employee must adhere to in order to receive approval for future absences. Sick leave restriction may apply to requests for sick leave or any leave requested in lieu of sick leave.
- B. Sick leave restriction is appropriate in the following circumstances: frequent unscheduled absences, tardiness, or an unacceptable pattern of leave usage.
- C. The leave restriction procedures will notify the employee of the reason for the leave restriction, the time period of the restriction, and the specific information that will be required to support future leave requests, such as medical certification or other documentation. It will also include the specific procedures the employee must adhere to when requesting leave, such as to whom the request is made and when the supporting information must be submitted.
- D. Employees will not be allowed to earn credit hours or work at an alternative duty station (ADS) while on sick leave restriction. However, after a three month period on sick leave restriction, the manager, at his/her sole discretion, may allow the employee to earn credit hours. If there is any appearance of misuse of this privilege, the manager may, at his/her sole discretion, cancel the privilege of earning credit hours for the remainder of the leave restriction period or subsequent extensions of that period.

Section 6. Advance Annual/Sick Leave

- A. Advance annual leave is leave requested but not yet earned by the employee. It must be requested on an OPM Form 71 and is subject to approval by the designated management official. An employee may be advanced an amount that is the total annual leave that the employee will accrue up to the end of the leave year.
- B. Sick leave up to a total of 240 hours may be advanced in cases of serious disability or ailment of the employee or family member or domestic partner or for purposes relating to the adoption of a child, and when the designated management official determines it is appropriate under the circumstances. For a part-time employee, the maximum amount of sick leave an Agency may advance must be prorated according to the number of hours in the employee's regularly scheduled administrative workweek.
- C. An employee's request for advanced sick leave must be in writing and must be supported by a medical certificate. Medical certification for advanced sick leave will include all of the requirements contained Section 3.C. above.
- D. Advance annual/sick leave may not be granted to a temporary employee beyond the date set for the expiration of his/her temporary appointment or to an employee while on leave restriction. It may not be granted to any employee if there is a likelihood that he/she will retire, be separated, or resign from the Agency before the date when he/she will have earned the leave. Upon separation, employees must repay any leave advanced and not earned at the time of separation (except for separation due to death or disability retirement).
- E. Employees are not automatically entitled to advanced annual/sick leave.
- F. Denials of requests for advanced annual/sick leave should be conveyed to the employee promptly and contain a specific explanation of the reasons for the denial.
- G. Annual leave or sick leave earned on a current basis should not be used until the amount of annual/sick leave advanced has been repaid.

Section 7. Family and Medical Leave Act

- A. In accordance with 5 C.F.R. Parts 630.1201-1211, an employee who has completed at least 12 months of Federal service is entitled to a total of 12 weeks of leave without pay (LWOP) during any 12-month period under the Family Medical and Leave Act (FMLA) for one or more of the following reasons:
 - 1. The birth of a son or daughter of the employee and the care of such son or daughter.
 - 2. The placement of a son or daughter with the employee for adoption or foster care.
 - 3. The care of a family member of the employee with a serious health condition.
 - 4. Family member is defined as:
 - a. Spouse (to include a same sex spouse);
 - b. Children (to include those of same sex spouses), including adopted children; and

- c. Parents or those who stand, or stood, in loco parentis to an employee, but not parents-in-law.
 - 5. A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position.
- B. In accordance with 5 C.F.R. Part 630.1202, a “serious health condition” is defined as an illness, injury, impairment, or physical or mental condition, which includes, but is not limited to, the following:
 - 1. Any period of incapacity or treatment in connection with, or consequent to, inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility.
 - 2. Continuing treatment by a health care provider that includes (but is not limited to) examinations to determine if there is a serious health condition and evaluations of such conditions if the examinations or evaluations determine that a serious health condition exists.
- C. Substitution of Paid Leave
 - 1. The employee may elect to substitute paid leave in accordance with 5 C.F.R. Part 1205 for any part of the applicable period. An employee may not retroactively substitute paid leave for unpaid family and medical leave. An employee may continue to use earned compensatory time and credit hours, subject to supervisory approval, in addition to his/her entitlement to leave under the FMLA.
 - 2. An employee may request to use leave on an intermittent basis or under a reduced leave schedule. The employee must consult with the manager and make a reasonable effort to schedule intermittent LWOP and/or paid leave so as not to disrupt the operations of the Agency.
- D. Notice of Leave
 - 1. Requests for use of unpaid leave under the FMLA will be made in writing on OPM Form 71. The employee must check Item 5 of the OPM Form 71: “I hereby invoke my entitlement to family and medical leave for: birth/adoption/foster care; serious health condition of spouse, son, daughter, or parent; [or] serious health condition of self,” as appropriate.
 - 2. When the need for unpaid leave under the FMLA is foreseeable, the employee will provide 30 calendar days’ notice of the intent to take leave. Otherwise, the employee will provide such notice as is practicable. If the need is foreseeable and the employee fails to give 30 calendar days’ notice with no reasonable excuse for the delay of notification, the Agency may delay the taking of unpaid leave under the FMLA until at least 30 days after the date the employee provides notice of his or her need for family and medical leave.
- E. Medical Certification
 - 1. The written medical certification under the FMLA for the employee’s illness shall include:
 - a. The date the serious health condition commenced;

- b. The probable duration of the serious health condition or specify that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity;
 - c. The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health care provider; and
 - d. A statement that the employee is unable to perform one or more of the essential functions of his or her position or requires medical treatment for a serious health condition, based on written information provided by the Agency on the essential functions of the employee's position, or, if not provided, discussion with the employee about the essential functions of his/her position.
2. In the case of medical certification under the FMLA for a family member of the employee, in addition to a. through d. in Section E.1. above, it shall include:
 - a. A statement from the health care provider that the spouse, son, daughter, or parent of the employee requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs; and would benefit from the employee's care or presence; and
 - b. A statement from the employee on the care he or she will provide and an estimate of the amount of time needed to care for his or her spouse, son, daughter, or parent.
 3. In the case of medical certification to take FMLA leave on an intermittent basis or leave on a reduced schedule for either the employee's own illness or a family member's illness, it shall also include the dates (actual or estimates) on which planned medical treatment is expected to be given, the duration of such treatment, and the period of recovery, if any, or specify that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.
 4. If the Agency doubts the validity of the original certification, the Agency may require, at the Agency's expense, the employee to obtain the opinion of a second health care provider designated by the Agency concerning the information certified.
 5. The definition of "health care provider" will be consistent with the provisions of the FMLA, 5 C.F.R. Part 630.1202.
 6. To remain entitled to leave under the FMLA, an employee or the employee's spouse, son, daughter, or parent must comply with any requirement from the Agency that he or she submit to examination (not treatment) to obtain a second medical certification from a health care provider other than the individual's health care provider.

7. An employee must provide the written medical certification signed by a health care provider, no later than 15 calendar days after the date the Agency requests such medical certification. If it is not practicable under the particular circumstances to provide the requested medical certification no later than 15 calendar days after the date requested by the Agency, despite the employee's diligent, good faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the Agency requests such medical certification.
8. If the employee fails to provide the requested medical certification, the Agency may:
 - a. Charge the employee as AWOL; or
 - b. Allow the employee to request that the provisional leave be charged as LWOP or charged to the employee's annual and/or sick leave account, as appropriate.

F. Medical Recertification

While an employee is on family and medical leave, the Agency may require subsequent medical recertification from the health care provider if the circumstances described in the original medical certification are subject to change significantly, if the Agency receives bona fide information that casts doubts upon the continuing validity of the medical certification, or for any reason that the Agency determines to be necessary. Such requests for medical recertification will not occur more frequently than every six weeks except as determined necessary by the Agency.

G. An employee eligible for leave under the FMLA may request to work at an ADS.

H. Protection of Employment and Benefits

Upon return from leave under the FMLA, the employee will be restored to the same position that he/she occupied before the leave or an equivalent position, with equivalent benefits, pay, status, and to the extent possible, other terms and conditions of employment.

I. When an employee requests leave under the FMLA, the Agency will provide guidance concerning the employee's rights and obligations under the program.

J. An employee who meets the criteria for leave under the FMLA and has complied with the requirements under this Section will be granted leave, consistent with all applicable rules governing the FMLA.

Section 8. Preventive Health Leave

A. Employees with a balance of less than 80 hours of accrued sick leave may request up to four hours of preventive health leave (administrative leave) each calendar year for preventive health screenings. Examples of preventive health screenings include, but are not limited to, prostate, cervical, colorectal, breast cancer, sickle cell anemia, blood lead level, blood cholesterol level, immunity system disorders such as HIV, and blood sugar

level testing for diabetes. Overall general health screenings such as annual physicals, and eye and dental exams can also be included.

- B. Preventive health leave may be used for one appointment, can be spread out for several appointments, or used in conjunction with other leave to cover the time for these screenings.
- C. An employee may not be granted preventive health leave to accompany a family member receiving preventive health screenings.

Section 9. Voluntary Leave Transfer Program

- A. The Voluntary Leave Transfer Program (VLTP) allows Federal employees to donate annual leave to other employees who need leave because of a medical emergency. A medical emergency is defined as a medical condition of an employee or a family member or domestic partner of an employee that may require an employee's absence from duty for a prolonged period and results in a substantial loss of income to the employee because of the unavailability of paid leave. An employee must have exhausted all annual leave and sick leave prior to using any donated leave.
- B. The Agency will post the VLTP application and donating procedures on the intranet, as well as information about Set-Aside Accounts.
- C. On a monthly basis, the Agency will provide the list of names of employees on the VLTP via an Agency-wide broadcast.

Section 10. Official Closing Due to Inclement Weather/Emergency Conditions

A. Procedures

1. The closing of the Agency sites in the Baltimore metropolitan area will be governed by announcements issued by the Administrator, or designee.
2. The closing of Agency sites in the Bethesda, MD and the Washington D.C. metropolitan area are governed by announcements issued by the Office of Personnel Management (OPM).
3. Agency sites in the Regional/Satellite Offices will be governed by announcements by the local governing Federal Executive Board or the Regional Administrator, or designee.
4. The Agency will periodically communicate to employees the procedures for building closure, as well as any additional information needed regarding late opening, full day closing, or early dismissal announcements.
5. Leave approving officials will be as liberal as possible in approving requests for leave/LWOP during periods of inclement weather or other emergency conditions. During periods of inclement weather or other emergency conditions, leave approving officials will give special consideration to employees with disabilities. Special consideration would include arranging to work at an ADS the evening before the anticipated condition.

B. Full Day Closing

When a decision is made to close any CMS facility for a full day, employees previously authorized annual or sick leave will be charged leave. Employees in a non-pay status (LWOP or AWOL) both before and after the full day closing will continue in a non-pay status for the entire work day.

C. Late Openings

When the opening of the Agency is delayed due to hazardous weather or other conditions beyond the control of the Agency, all employees in the affected locations will revert to a 7:30 a.m. fixed starting time for that day (8:00 a.m. in Bethesda, MD and Washington D.C.). Ending times will depend upon the employee's flextime work schedule.

Employees will be granted excused absence from 7:30 a.m. (8:00 a.m. in Bethesda, MD and Washington D.C.) up to the official announced opening time. Employees previously scheduled for a full day of leave on the day a late opening is announced or those requesting leave on the day of the announcement, will not be granted the authorized period of excused absence.

For employees whose regular working hours fall outside the period between 7:30 a.m. (8:00 a.m. in Bethesda, MD and Washington, D.C), and the late opening time, those employees will report as determined by management.

D. Early Dismissal

When the decision is made to dismiss employees early during the work day, employees not involved in essential services who depart at the announced dismissal time will be granted excused absence for the remainder of their regular working hours for the day. Employees must be on duty part of the day when an early dismissal is authorized in order to be entitled to any period of excused absence. In the event an employee in a duty status on the day of an early dismissal requests leave/LWOP and departs before the official dismissal time, leave will be charged for the remainder of the day.

E. The telecommuting programs in this Agreement will govern an employee's responsibilities when there is a delayed opening, early dismissal, or facility closure.

Section 11. Adjustment of Work Schedules for Religious Observances

A. In accordance with 5 C.F.R. Parts 550.1001-1002, requests for religious compensatory time (RCT) will be granted unless the manager determines that workload requirements or coverage needs preclude the granting of the leave for the time requested. RCT is earned in lieu of all premium pay under Title 5 and the overtime pay provisions of the Fair Labor Standards Act. Part-time employees may earn RCT for work performed outside their regular working hours even though such work is not necessarily in excess of eight hours in a day or 40 hours in a workweek.

B. Employees must request approval of RCT for religious observances from the appropriate leave approving official in advance and in writing. All requests will be submitted on an OPM Form 71 (to include appropriate attachments). Requests must include all of the following information:

1. The dates(s) and number of hours requested.

2. In the space provided for remarks, the employee must state, “This leave is because my personal religious belief requires me to refrain from work for a religious observance for (this day) or (portion of the day).”
 3. The proposed dates(s) on which the religious compensatory work will be performed.
- C. During the months of May and November each year, employees will submit requests for RCT for the six-month periods of October through March and April through September, respectively. Such written requests should be submitted to the appropriate approving manager by the last work day of May and November, respectively.
 - D. When requests for religious time off are submitted after the May or November scheduling periods, the requests will be considered on a first-come, first-served basis.
 - E. Only after the manager approves both the employee’s request for RCT and his/her religious compensatory work schedule will the employee work RCT. While the employee’s request to work at specific times must be considered, authority for scheduling the time to be worked is vested in the manager. The religious compensatory work schedule will be approved at the same time the request for RCT is approved. Where it is not possible to schedule the work concurrent with the approval of the request for RCT, the manager will make the decision to schedule the work as the work is needed, but within the allotted time period specified. It is the employee's responsibility to take advantage of the opportunities offered or to obtain advance approval to work at other times.
 - F. All RCT must be worked within the four pay periods in advance of or four pay periods after the religious event.
 - G. Employees may be allowed to accumulate RCT in increments of at least ¼ hour per day until the number of hours work needed are met.
 - H. Upon separation, any unused RCT will be paid to the employee in accordance with regulations.
 - I. Employees may work RCT at an ADS.

Section 12. Excused Absence (Administrative Leave)

- A. Excused absence (otherwise referred to as “administrative leave”) is absence from assigned duties without charge to leave or loss of pay.
- B. Excused absence may be granted for an employee when the Agency determines such grant is in the public interest.
- C. Employees may be granted up to four hours of excused absence to donate blood to an Agency-sponsored or endorsed blood program. Such leave time will only be for the amount of time necessary to travel to the donation site, donate blood, recuperate at the donation site, if needed, and return to work if the employee’s tour of duty is not over. Additional excused absence may be granted to employees who donate blood platelets (e.g., through local/regional hemapheresis donor programs).

- D. Veterans may be granted up to four hours of excused absence to serve as a pallbearer, member of a firing squad, or guard of honor in a funeral ceremony for a member of the Armed Forces whose remains are returned from abroad.
- E. In accordance with 5 U.S.C. § 6327, upon request, and subject to certification by a physician, leave approving officials will approve excused absence for employees who serve as living donors for bone marrow, organ and tissue donation, and transplantation. The use of excused absence can cover time off for activities such as donor screening, the actual medical procedure, and recovery time. Leave approving officials will approve:
1. Up to seven work days of absence without charge to leave or loss of pay for each donation by employees participating as living bone marrow donors.
 2. Up to 30 work days of absence without charge to leave or loss of pay for employees participating as living organ or tissue donors.
- The length of absence from work can vary depending on the medical procedure involved in the donation. Therefore, for longer periods of incapacitation, leave approving officials will approve annual and/or sick leave or LWOP in combination with the maximum amounts of excused absence specified in 1. and 2. above.
- F. In the event of major disruption in public transportation, employees who normally utilize the disrupted public transportation may, at the discretion of the manager, be granted excused absence.
- G. As a general rule, where polls are not open at least three hours before an employee's usual arrival time or after an employee's usual departure time, he/she may be excused for enough time to permit him/her to report for work three hours after the polls open or leave work three hours before the polls close, whichever requires less time off.
- H. Upon the publication of regulations implementing the Administrative Leave Act of 2016, the Agency will provide notice and, upon request, bargain with the Union in accordance with Article 4 of this Agreement and to the extent required by law.

Section 13. Leave Without Pay (LWOP)

- A. The authorization of LWOP is at the discretion of the leave approving official. Requests may be denied if the workload requirements or coverage needs preclude the granting of the leave for the time requested.
- B. Employees can take up to 24 hours of unpaid leave during any 12-month period to fulfill certain family obligations, to include the family of an employee's same sex domestic partner or spouse. Employees could use unpaid leave for the following:
1. School and Early Childhood Educational Activities – to allow employees to participate in school activities directly related to the education advancement of a child. This would include parent-teacher conferences or meetings with child care providers, interviewing for a new school or child care facility, or participating in volunteer activities supporting the child's educational advancement. "School" refers to an elementary school, secondary school, Head Start program, or a child care facility.

2. Routine Family Medical Purposes – to allow parents to accompany children to routine medical and dental appointments, such as annual checkups or vaccinations.
 3. Elderly Relatives' Health or Care Needs – to allow employees to accompany an elderly relative to routine medical or dental appointments or other professional services related to care of the elderly relative, such as making arrangements for housing, meals, phones, banking services, and other similar activities.
- C. In accordance with Government-wide rule or regulation, LWOP must be granted in the following circumstances:
1. A disabled veteran undergoing medical examination or treatment in connection with a service-connected disability.
 2. Military training for a reservist or National Guard member.
 3. An employee who has suffered an incapacitating job-related injury or illness and is waiting adjudication of his/her claim for employee compensation by the Office of Workers' Compensation Program.
 4. An employee who makes a request under the FMLA and such request meets the criteria for FMLA leave.
- D. Before requesting LWOP, employees should consult with their servicing human resources office concerning the potential consequences of LWOP on tenure, WGIs, retirement, health benefits, and other benefits.

Section 14. Military Leave

- A. In accordance with 5 U.S.C. § 6323, full-time employees who are members of the National Guard or the Armed Forces Reserves are entitled to 120 hours (15 days x 8 hours) of regular military leave (ML) in a fiscal year for active duty or inactive duty for training.
- B. For part-time employees, ML is prorated based on the number of hours in the employee's regularly scheduled biweekly tour of duty.
- C. Employees who do not use the entire 120 hours can carry any unused ML (not to exceed 120 hours) over to the next fiscal year. ML may never exceed 30 days.
- D. In accordance with Public Law 106-554, ML should be credited to a full-time employee on the basis of an 8-hour work day. The minimum charge to leave is one hour. An employee may be charged ML only for hours that the employee would otherwise have worked and received pay, i.e., the employee will not be charged ML for non-duty hours (typically weekends and holidays) that occur within the period of military service.
- E. Employees who request ML for inactive duty training (which generally is two, four, or six hours in length) will be charged only the amount of ML necessary to cover the period of training and necessary travel. Hours in the civilian work day that are not chargeable to ML must be worked or charged to another leave category, as appropriate.
- F. Employees are entitled to 22 work days per calendar year for emergency duty as ordered by the President, the Secretary of Defense, or a State Governor. Emergency duty includes

supporting of civil authorities in the protection of life and property or performing full-time military service as a result of a call or order to active duty in support of a contingency operation as defined in Section 101(a)(13) of Title 10, United States Code.

- G. Employees are entitled to not more than three days of leave without loss of or reduction in pay or leave to which he/she is otherwise entitled, to make arrangements for, or attend the funeral of, or memorial service for, an immediate relative (as defined in Section 4. A. of this Article) who died as a result of wounds, disease, or injury incurred while serving as a member of the Armed Forces in a combat zone. The three days need not be consecutive, but if not, the employee will furnish the approving official satisfactory reasons justifying a grant of funeral leave for nonconsecutive days.
- H. An employee who is a veteran of a war, or of a campaign or expedition for which a campaign badge has been authorized, or a member of an honor or ceremonial group of an organization of those veterans, may be excused from duty without loss of pay or deduction from annual leave for the time necessary, not to exceed four hours in any one day, to enable him/her to participate as an active pallbearer or as a member of a firing squad or a guard of honor in a funeral ceremony for a member of the Armed Forces whose remains are returned from abroad for final interment in the United States.

Section 15. FMLA Military Family Leave Entitlement

- A. 5 C.F.R. Part 630.1204 provides additional entitlements to families of military service members.

1. FMLA Leave for a Qualifying Exigency of a Federal Employee

Federal employees are entitled to up to 12 administrative workweeks of unpaid FMLA leave during a single 12-month period for any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

a. Qualifying Exigency Leave may be used for the following reasons:

1. Short-notice deployment of seven or fewer calendar days prior to the date of deployment;
2. Military events and related activities;
3. Childcare and school activities;
4. Financial and legal arrangements;
5. Counseling;
6. Rest and recuperation;
7. Post-deployment activities; or
8. Additional activities or events which arise out of the military member's covered active duty or call to covered active duty, provided the Agency agrees that such leave shall qualify as an

exigency, and the Agency agrees to the timing and duration of such leave.

b. FMLA Military Leave that is used for the above:

1. May be used intermittently or on a reduced leave schedule.
2. Permits an employee to substitute annual or sick leave, as appropriate, for unpaid qualifying exigency leave.
3. Requires that when the need for qualifying exigency leave is foreseeable, employees must give reasonable and practicable notice to the Agency.
4. Provides that the Agency may require that a request for a qualifying exigency leave be supported by a certification issued “at such time and such manner as the Office of Personnel Management (OPM) may by regulation prescribe.”

- c. In order for an employee to be eligible to use qualifying exigency leave for a member of a reserve component of the Armed Forces, the reservist must be deployed under a call or order to active duty in a foreign country. Also, the call or order to active duty must be covered by one of the following specific provisions in Title 10 of the United States Code: Sections 688, 12301(a), 12302, 12304, 12305, or 12406, Chapter 15 (which includes Sections 331, 332, and 333), or any other provision of law during a war or national emergency declared by the President or Congress. (Such service is “covered” active duty: the specific provisions are synopsized below.) Covered active duty for a member of a reserve component of the Armed Forces does not include voluntary active duty under 10 U.S.C. § 12301(d) or annual training duty under 10 U.S.C. §§10147 or 12301(b).

d. Certification for Qualifying Exigency Leave

The following will be considered acceptable certification for use of qualifying exigency leave:

1. Active Duty Orders;
2. The optional Department of Labor certification form WH-384; or
3. Certification from the employee that provides the following information:
 - (a) A statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which FMLA leave is requested. The facts must be sufficient to support the need for leave. Such facts should include information on the type of qualifying exigency for which leave is requested and any available written documentation which supports the request for leave; such documentation, for example, may include a copy of a meeting announcement for informational briefings

sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs;

- (b) The approximate date on which the qualifying exigency commenced or will commence;
- (c) If an employee requests leave because of a qualifying exigency for a single, continuous period of time, the beginning and ending dates for such absence;
- (d) If an employee requests leave because of a qualifying exigency on an intermittent or reduced schedule basis, an estimate of the frequency and duration of the qualifying exigency; and
- (e) If the qualifying exigency involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting (such as the name, title, organization, address, telephone number, fax number, and email address) and a brief description of the purpose of the meeting.

2. FMLA Leave to Care for a Covered Service Member

Employees are entitled to up to 26 administrative workweeks of unpaid FMLA leave in a single 12-month period to a Federal employee who: (1) is the spouse, son, daughter, parent, or next of kin (defined as nearest blood relative) of a covered service member (to include veterans undergoing medical treatment, recuperation, and therapy, and was a member of the Armed Forces at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy) with a serious injury or illness; and (2) provides care for such service member.

- a. The serious illness or injury must have been incurred by the covered service member in the line of duty while on active duty in the Armed Forces.
- b. Covered family members are entitled to up to 26 weeks of FMLA leave during a single 12-month period to care for the service member (hereafter referred to as “leave to care for a covered service member”).
- c. During the single 12-month period, the employee is entitled to a combined total of 26 weeks of regular FMLA leave and FMLA leave to care for a covered service member. For example, if during the single 12-month period an employee wants to take six weeks of regular FMLA leave for the birth of a child, as well as FMLA leave to care for a covered service member, the six weeks of regular FMLA leave would be subtracted from

the combined entitlement of 26 weeks, leaving the employee with 20 weeks of leave to care for a covered service member.

- d. The use of this leave to care for a covered service member in a single 12-month period does not limit the use of regular FMLA leave during any other 12-month period. For example, if an employee uses 26 weeks of FMLA leave to care for a covered service member during a single 12-month period, but has not used any regular FMLA leave during that period, the employee would still be entitled to use up to 12 weeks of regular FMLA leave immediately following the single 12-month period.
- e. Similar to regular FMLA leave, FMLA leave to care for a covered service member is unpaid leave for which an employee may substitute any accumulated annual or sick leave. However, the normal leave year limitations on the use of sick leave to care for a family member do not apply; an employee may substitute annual or sick leave for any part of the 26-week period of unpaid FMLA leave to care for a covered service member.

Section 16. Disabled Veteran Leave

- A. In accordance with 5 U.S.C. § 6329, any new Federal employee hired after November 5, 2016, who is a veteran with a service-connected disability rated at 30% or more for purposes of undergoing medical treatment for such disability for which sick leave could regularly be used, is eligible for disabled veteran's leave. Disabled veteran leave is available during the first 12 months of employment and may not exceed 104 hours. Disabled veteran leave not used during the first 12 months of employment may not be carried over to subsequent years and will be forfeited. Disabled veteran leave is not available to non-Title 5 employees.
- B. In order to verify that disabled veteran leave is used for the treatment of a service-connected disability, an eligible employee must submit certification issued by a health care provider that the employee used such leave for purposes of receiving treatment for the service-connected disability.

Section 17. Court Leave

- A. In accordance with 5 U.S.C. § 6322, an employee with a regular scheduled tour of duty is entitled to court leave (CL). CL will be approved if the employee is summoned:
 - 1. For jury duty;
 - 2. To court to serve in an unofficial capacity as a witness for, or supply evidence for, State or local government; or
 - 3. To court to serve in an unofficial capacity as a witness for, or to supply evidence for, a private party when the Federal, D.C., State or local government is either the plaintiff or the defendant.
- B. CL is not to be granted to an employee who appears in court as either a plaintiff or a defendant on his/her own behalf or to accompany minor children who are summoned to

appear in court as either a plaintiff or defendant. Employees should present the court order, subpoena, or summons to their leave approving official when they request CL for appearing as a witness or a juror.

- C. If the court does not provide the employee with proof of attendance, the employee will submit a written attestation to serve as his/her proof of attendance.
- D. No compensation is received for serving on jury duty in a Federal court; however, employees may keep expense money received for mileage, parking or required overnight stay. Monies received for performing jury duty in State or local courts are indicated on the pay voucher or check as either “fees for services rendered” or “expense money.” “Expense money” may be retained by the employee; “fees for services rendered” must be submitted to the Agency's finance office.

Section 18. Leave Flexibilities Available for Childbirth

The Agency will post information on the CMS intranet that will inform employees of the various leave flexibilities available to employees related to childbirth.

Article 32: Tests

Section 1.

All tests and selection procedures will be in accordance with applicable law and Government-wide rule or regulation.

Section 2.

Ordinarily, employees will be granted duty time to take CMS- or HHS-sponsored tests that may be used for promotion and/or placement in CMS.

Section 3.

Prior to implementing a new test or changes in the application of ongoing tests, the Agency will provide notice and, upon request, bargain with the Union to the extent required by law and in accordance with the mid-term bargaining provisions of this Agreement.

Article 33: Temporary, Probationary, and Part-Time Employees

Section 1. Temporary Employees

Temporary employees may be separated at any time upon notice in writing from the Agency.

Section 2. Probationary Employees

- A. Probationary employees will be afforded the opportunity to develop and to demonstrate their proficiency.
- B. Probationary employees will be provided with one-on-one sessions with their managers about their conduct and performance and their standing for conversion to career-conditional status. If the manager believes performance or conduct issues may prevent conversion to career-conditional status, these session(s) should be documented in writing.
- C. Probationary employees have the same right to Union representation as all other employees.
- D. In accordance with 5 C.F.R. Part 315.804, when the Agency decides to terminate an employee serving a probationary period, the Agency shall notify the employee in writing as to why he or she is being terminated and the effective date of the action. The information in the notice as to why the employee is being terminated shall, at a minimum, consist of the Agency's conclusions as to the inadequacies of his or her performance or conduct.
- E. Probationary employees may choose voluntary resignation in lieu of termination at any time prior to the effective date of their termination. If the probationary employee voluntarily resigns, the employee's Official Personnel Folder will not contain an Agency comment or finding regarding the termination.

Section 3. Part-Time Employees

- A. To be considered part-time for purposes of this Section, an employee must have a regularly-scheduled tour of duty, (set in advance) of at least 16 hours, but not more than 32 hours, in an administrative work week.
- B. The Agency will give genuine consideration to employee requests regarding part-time career employment consistent with the Agency's resource and mission requirements.
- C. The Agency recognizes that part-time employment may be particularly appropriate for the following:
 - 1. Employees seeking gradual transition into retirement;
 - 2. Employees with disabilities or others who require a reduced workweek;
 - 3. Employees who must balance family responsibilities;
 - 4. Employees who must finance their own education and/or vocational training; or

5. Employees seeking to enter into a job sharing arrangement whereby the regular working hours of two employees are arranged in such a way as to cover a single full-time position.
- D. Denials of requests for part-time employment from full-time employees will be discussed with the employee, and upon request, the employee will be provided with written reasons for denial.
- E. A part-time career employee's tour of duty will be documented on an SF-50, Notification of Personnel Action.
- F. In accordance with 5 U.S.C. § 3403, the Agency shall not abolish any position occupied by an employee in order to make the duties of such position available to be performed on a part-time career employment basis, and any employee who is employed on a full-time basis shall not be required to accept part-time employment as a condition of continued employment.
- G. An employee's request for temporary adjustment of an established part-time work schedule may be granted if based on personal need or to permit participation in details, other assignments, or training. Such adjustment shall not result in a permanent change of the employee's established part-time work schedule.
- H. Part-time employees will not be denied accessibility to employee activities (e.g., health facilities) or attendance at Agency-approved training courses solely because of their part-time status.
- I. The Agency will advise employees, upon request, in writing of the effects of converting to part-time employment as it relates to all employee benefits prior to the actual conversion, including the effects on service credits.
- J. Employees who accept or are permitted to convert to part-time positions have no guarantee that they will subsequently be converted to full-time employment, but the Agency agrees to give genuine consideration to an employee's request for conversion based on the employee's circumstances and the resources and mission requirements of the Agency. However, when the Agency permits an employee to convert to a part-time position for an agreed-upon period of time (not to exceed nine months), such permission will be documented in writing (with a copy to the employee), and the employee will be guaranteed conversion to full-time at the end of the agreed-upon period.
- K. Before phased retirement is implemented in accordance with 5 C.F.R. Part 848, the Agency will provide notice and, upon request, bargain with the Union to the extent required by law.

Article 34: Workers' Compensation

Section 1. Information

The Agency agrees that as soon as practical after an employee notifies his or her manager and/or the appropriate Injury Compensation Specialist (ICS) of an occupational disease/illness or traumatic injury/illness that occurred in the performance of duty, they will advise the affected employee of his/her rights and responsibilities under the Office of Workers' Compensation Program (OWCP), Federal Employees Compensation Act (FECA). Additionally, an employee may, at any time during the process, request information concerning the employee's rights under this program. These rights include the following:

- A. The employee's right to file a claim for FECA benefits;
- B. The types of benefits available, including medical, continuation of pay (COP), and compensation for disability and death;
- C. The procedures for filing a claim will be posted on the Agency's intranet;
- D. The option to request to use compensation benefits for an approved claim in lieu of sick or annual leave;
- E. The right to representation (e.g., attorney, Union representative, family member or friend), upon written designation, with regard to his/her claim; and
- F. Employees in a travel status are covered 24-hours a day for all reasonable incidents of their temporary duty in accordance with applicable Government-wide law, rule, or regulation.

Section 2. Definitions

- A. Traumatic injury/illness – A condition of the body caused by a specific event or incident, or series of events or incidents, within a single work day or shift. Such condition must be caused by an external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected, e.g., a fall that causes a broken bone.
- B. Occupational disease or illness – A condition produced by the work environment over a period longer than a single work day or shift, e.g., carpal tunnel syndrome. Occupational disease or illness may be produced by such work environment factors as systemic infections, continued or repeated stress or strain, exposure to toxins, poisonous fumes, noise, etc.
- C. Continuation of Pay (COP) – If an employee sustains a job-related traumatic injury, the Agency must continue the employee's regular pay during any periods of resulting disability, up to a maximum of 45 calendar days, in accordance with the requirements of the FECA. COP is subject to taxes and all other payroll deductions that are made from regular income.
- D. Disability – Partial or total incapacity due to a work-related injury, to earn the wages the employee was receiving at the time of the injury.

Section 3. Procedures for Filing Claims for Workers' Compensation Benefits

- A. As soon as possible after experiencing a job-related injury or illness, the employee should contact his/her manager and/or the ICS.
- B. In order to file a claim for workers' compensation benefits, the employee should electronically complete and submit for his or her manager's verification the OSHA 301 and Form CA-1, **Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation**, or Form CA-2, **Notice of Occupational Disease and Claim for Compensation**, and/or other necessary forms, located on the Department of Labor's (DOL's) Employees' Compensation Operations and Management Portal (ECOMP) website located at <https://www.ecomp.dol.gov>. Detailed instructions for completing the necessary forms are located on the ECOMP website.
- C. In order for employees to protect their right to workers' compensation benefits, they should file their notice of injury or occupational disease within 30 calendar days of the occurrence. However, the FECA (20 C.F.R. Part 10, Subpart B) allows for claims to be filed within three years of the occurrence and under certain circumstances beyond three years. If the employee is incapacitated, this action may be taken by someone acting on his/her behalf.
- D. If an employee sustains a work-related traumatic injury that requires immediate medical examination and/or treatment, the Agency will authorize such examination and/or treatment by providing the employee with a Form CA-16 (Authorization for Examination and/or Treatment) in accordance with the requirements of the FECA.
- E. If the employee's claim is approved, the employee will have the option of buying back any leave used for the work-related injury and having it reinstated to the employee's account in accordance with the requirements of the FECA.
- F. Employees have certain rights under the OWCP/FECA program relating to such issues as selection of a medical provider for treatment of an occupational disease or illness or traumatic injury/illness, light duty assignment, transfer of medical care, etc. The Agency agrees not to interfere in the employee's exercise of these rights, as set forth in 20 C.F.R. Part 10.
- G. The Agency will assist employees in obtaining technical information regarding the proper procedures for filing claims with the DOL/OWCP. Such assistance may be obtained by employees electronically or by making contact with the appropriate WCC. Employees should also visit the www.dol.gov website for workers' compensation information.
- H. The Agency agrees to notify employees electronically of the appropriate WCC's contact information for obtaining assistance relevant to workers' compensation claims, including electronically filing claims via ECOMP.

Section 4. Continuation of Pay

- A. In order to be eligible for COP, an employee must file a Form CA-1 within 30 days of the date the traumatic injury/illness occurred and ensure that medical evidence supporting disability resulting from the claimed traumatic injury is provided to the Agency within 10 calendar days after filing the claim for COP on Form CA-1 and meet any other applicable

requirements of 20 C.F.R. Part 10.210. Use the Agency's intranet for Workers' Compensation contact information.

- B. The Agency must advise the employee of their right to request COP and the need to elect among COP, annual, sick, or any other paid leave, (e.g., credit hours or compensatory time) or leave without pay, for any period of disability.
- C. Time lost on the day of traumatic injury does not count toward COP and should be charged as administrative leave.
- D. COP is not available to employees who file an occupational disease or illness claim (Form CA-2).
- E. If the employee's claim for compensation is disallowed by the DOL/OWCP or FECA, any of the 45 days of COP that were previously granted will be converted to sick leave, annual leave, earned credit hours, and/or leave without pay or considered an overpayment of pay under 5 U.S.C. § 5584. A conversion option is not available if an employee is convicted of fraudulently claiming or obtaining workers' compensation benefits under the Federal Employee's Compensation Act (FECA). The employee will be responsible for advising the Agency as to which form(s) of leave is (are) appropriate, and for completing an SF-71, Application for Leave.

Section 5. Return to Work

The Agency will make all reasonable efforts to assign employees to duties consistent with the employee's medical needs or offer appropriate employment, in accordance with the requirements of 20 C.F.R. Part 10, Subpart F.

Article 35: Use of Agency Equipment and Resources & Information System Security and Privacy

Section 1. Background

- A. The Parties recognize that the Agency uses information systems that contain personal and sensitive information to accomplish its mission and that the Agency has a responsibility to ensure information system security and privacy protection of such personal and sensitive information. The CMS Information Systems Security and Privacy Policy (CISSPP), which provides information on assuring the confidentiality, integrity, and availability of CMS information and systems, is posted on the CMS.gov website.
- B. CMS information and information systems are governed under the security and privacy framework of Federal laws, including, but not limited to, the Privacy Act of 1974, the e-Government Act of 2002, the Federal Information Security Management Act of 2002, the Federal Information Security Modernization Act of 2014, and the National CyberSecurity Protection Act of 2014.
- C. The Parties recognize the need to establish rules governing employees' acceptable use of Agency-owned or leased equipment and resources, including internet addresses or domain names registered to the Agency.
- D. Employees may be required to use specific technology or software (e.g., software for collaboration and communication, such as video, instant messaging, document sharing, etc.), to perform Agency work, participate in training, and/or attend meetings.
- E. The Agency will not use video or instant messaging software to monitor employees or rely upon it to determine an employee's availability or presence, which is not the purpose of the technology.
- F. Unless otherwise covered under Article 29, and excluding applications approved for use on personally-owned devices, employees must not use non-government furnished equipment, software, applications, and online services to conduct Agency business.
- G. The Parties agree that in order to maintain and enhance the competitive marketability of the Agency as a state-of-the-art employer at the forefront of the nationwide initiative to make positive significant, streamlined changes for the efficient and effective administration and provision of health care coverage, the Agency must have the flexibility to expedite the availability and use by all employees of new, efficient, and/or innovative forms of information technology. In keeping with the mutual commitment of the Parties to negotiate in good faith, the Agency will ensure that the Union is apprised of the Agency's progress toward utilization of new, efficient, and/or updated technologies to the extent required by law and in accordance with the mid-term bargaining provisions of this Agreement.
- H. The Parties recognize that employees have an expectation of privacy in their off-duty use of social networking and the internet when not using Agency owned or leased equipment and resources. Nothing in this Article waives any Federal employee's rights under existing laws and the First and Fourth Amendments of the United States Constitution.

Section 2. Definitions

- A. Sensitive information is any information, of which the loss, misuse, unauthorized access to or modification thereof, could adversely affect the national interest, the conduct of Federal programs, or the privacy, interests, and rights to which individuals are entitled under applicable Federal law and policy.
- B. Computer systems are any assembly of computer hardware, software, peripherals, or firmware configured to collect, create, communicate, compute, disseminate, process, store and/or control data.
- C. Agency-owned or leased equipment and resources includes, but is not limited to, computer systems (including internet and email), tablets, laptops, photocopiers, scanners, facsimile machines, telephones (including cell and smart phones), MiFi devices, and/or audio-visual equipment, Personal Identifiable Verification (PIV) cards, and other devices and technology that permit access to CMS information systems, information or data, and workspace.

Section 3. Training

The Agency agrees to provide appropriate training to employees involved in the operation or use of computer systems and proper handling of the sensitive information used by employees to perform their duties, to enhance employees' awareness of the threats to and vulnerabilities of computer systems and sensitive information, and to encourage the use of improved security and privacy practices.

Section 4. Privacy Expectations

The Parties recognize that employees have a reasonable expectation of privacy in the workplace. Consistent with internal security, employee users of Agency-owned or leased equipment and resources do not have an expectation of privacy while using such equipment or resources at any time, including times of permitted personal usage as set forth in this Article, and these activities may lead to review of individual suspect mails as determined appropriate by the Agency. Employees using the Agency's internet and email resources are subject to having activities monitored by system or security personnel without any further specific notice. To the extent that employees desire to protect their privacy, employees should not use Agency-owned or leased equipment and resources.

Although lawful monitoring of employee communications serve legitimate purposes, Federal law also protects the ability of employees to exercise their legal rights to disclose wrongdoing without fear of retaliation, which is essential to good government. Indeed, Federal employees are required to disclose waste, fraud, abuse, and corruption to appropriate authorities and are expected to maintain concern for the public interest, which may include disclosing wrongdoing. Therefore, the Agency will ensure that monitoring policies and practices are consistent with the law.

Section 5. General Internet and Email Provisions

- A. Agency information technology resources, to include but not limited to, internet, email, computer work stations (i.e., docking stations, desk tops, laptops, tablets, etc.), and Agency-issued mobile devices are the property of the Agency. Any use of information technology resources is made with the understanding that such use is not secure, private, or anonymous, as provided in this Article. Any use of Agency-owned or leased equipment and resources may lead to review of individual suspect emails consistent with Sections 4 and 5.B. of this Article.
- B. The Agency generally does not read the content of emails sent by employees using the Agency's resources to access their personal accounts. However, in cases where the Agency has a reasonable cause to believe that an employee is engaging in misconduct or to investigate the potential harm of an IT security incident, the Agency may take appropriate investigative action. The Agency's internet and email resources are subject to having activities monitored by system or security personnel without any further specific notice.
- C. Employees should be aware that when they access the internet using internet addresses and domain names registered to the Agency, they may be perceived by others to represent the Agency. Employees shall not use the internet in such a way that they are reasonably perceived to represent the Agency for any unofficial purpose.

Section 6. Permitted Usage of Agency Equipment and Resources

Agency-owned, leased, and issued equipment and resources are for Agency use and not for personal use. However, limited personal use (e.g., checking the weather, traffic, or news) of Agency-owned, leased, or issued equipment and resources by employees during non-work hours (i.e., weekends, before and after working hours, or during lunch periods) is considered permissible when the following conditions are met:

- A. Such use involves minimal additional expense to the Agency;
- B. Such use does not interfere with the mission or operation of the Agency;
- C. Such use does not violate the Standards of Ethical Conduct for Employees of the Executive Branch;
- D. Such use does not overburden any Agency information resources;
- E. Such use does not put CMS data at risk of unauthorized disclosure or dissemination; and
- F. Such use is not otherwise prohibited under this Article.

Section 7. Prohibited Usage of Agency Equipment and Resources

- A. The following uses of Agency-owned, leased, or issued equipment or resources, either during working or non-working hours, are strictly prohibited:
 - 1. Activities that are in violation of law, Government-wide rule or regulation, or that are otherwise inappropriate for the workplace;

2. Activities that would compromise the security of the Government. This includes, but is not limited to, sharing or disclosing log-in identification and passwords;
 3. Fund-raising or partisan political activities, endorsements of any products or services, or participation in any lobbying activity;
 4. All email communications to groups of employees that are subject to approval prior to distribution and have not been approved by the Agency (e.g., retirement announcements, Union notices or announcements, charitable solicitations);
 5. Downloading and/or installing software from the internet or other electronic sources that is non-approved software. This includes, but is not limited to, games, virus software, port scanners, vulnerability scanners, password crackers, anti-virus software, firewalls, and web browsers;
 6. Accessing personal email accounts (e.g., Gmail, Yahoo);
 7. Using CMS email addresses for non-work related activities, except as necessary for emergency contact information (e.g., school, day care, adult care facility). Such use increases the risk of receiving spam and phishing emails. For example, employees should not use their CMS email address for restaurant orders, online shopping, bank log-ins, retail flyers, promotional materials, etc.;
 8. Using non Agency-approved data transfer, storage, or backup services (e.g., iCloud or personal flash or USB drives); and
 9. Transmitting CMS work-related email and/or information to or from one's own personal email account.
- B. Prohibited or inappropriate use of all Agency-owned or leased equipment or resources by an employee could result in the loss of use or limitations of the use of such equipment or resources, disciplinary or adverse action, criminal penalties, financial liability for the cost of inappropriate use, or any other action deemed appropriate by the Agency. For example, such activities include:
1. Activities that are violations of law, government-wide rule or regulation, and/or this Agreement;
 2. Viewing, downloading, or exchanging pornographic material on or through the use of government equipment; and
 3. The operation of a business (e.g., real estate, tax services, kitchen and cosmetic products) on government issued equipment.
- C. Unless an employee is on official government travel, government furnished equipment (e.g., laptops, phones) may not be transported out of the country without explicit Agency Head approval.

Section 8. Employee Responsibilities

Use of Agency-owned or leased equipment and resources to accomplish work-related responsibilities will always have priority over personal use. See Article 29 for using Agency-owned equipment while working at an alternate duty station (ADS). In order to avoid capacity

problems and to reduce the susceptibility of Agency information technology resources to computer viruses and cyber-attacks, employees shall comply with the following requirements:

- A. Personal files obtained via the internet may not be stored on individual computer hard drives or on local area network (LAN) file servers;
- B. Official video and voice files may not be downloaded from the internet, except when they will be used to serve an approved Agency function;
- C. Internet and email etiquette, customs, and courtesies shall be followed when using Agency-owned or leased equipment or resources;
- D. Information, to include Agency email messages, will be properly safeguarded and stored on Agency-issued workstations, laptops, removal storage devices (e.g., flash drives and external hard drives), and recordable media (e.g., CDs/DVDs), regardless of the location of that government equipment;
- E. Exercise reasonable measures (e.g., equipment not visibly exposed, or left unattended in a public place) to properly store and safeguard equipment when offsite; and
- F. Upon leaving CMS employment, employees are responsible for returning all government-issued equipment and property, including, but not limited to, laptops, iPhones, PIV cards, etc. CMS may pursue debt collection procedures against any employee who fails to return any Agency-provided equipment.

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