MASTER
COLLECTIVE BARGAINING AGREEMENT

and

NTEU
National Treasury Employees Union

CHAPTER 337

June 10, 2019

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ARTICLE 1: COVERAGE AND DEFINITIONS

Section 1
Coverage

This Agreement covers all non-professional and professional employees employed by the U.S. Commodity Futures Trading Commission, but excluding all management officials, supervisors, and employees described in 5 U.S.C. §§ 7112(b)(2), (3), (4), (6), and (7).

Section 2
Definitions

A. The following definitions shall apply to terms used in this Agreement:
   1. The term "employee" means bargaining unit employees represented by NTEU unless otherwise stated;
   2. The terms "Employer" and "CFTC" mean the U.S. Commodity Futures Trading Commission;
   3. The term "Union" and "NTEU" means the National Treasury Employees Union, the certified exclusive collective bargaining representative pursuant to the Certification of Representative, dated November 17, 2014, and including any subsequent amendments by the Federal Labor Relations Authority (FLRA);
   4. The term "Chapter" means NTEU Chapter 337;
   5. The term "Parties" means the Employer and Union; and
   6. The term "days" means calendar days unless otherwise stated.

Section 3
New Employees

During the term of this Agreement, the Employer agrees that all new employees employed by CFTC described in Section 1 of this Article will be automatically covered under the terms and conditions of this Agreement. Any exceptions will be determined by operation of law.

ARTICLE 2: EFFECT OF LAW AND REGULATION

Section 1
Law and Regulation

A. In the administration of all matters covered by this Agreement, the Parties are governed by:

1. Existing and future laws;
2. Government-wide rules or regulations that are in effect upon the effective date of this Agreement;
3. Government-wide rules or regulations that are issued after the effective date of this Agreement that are not in conflict with this Agreement; and
4. CFTC regulations for which a compelling need is established pursuant to 5 U.S.C. § 7117(a)(2).

Section 2
Conflict

Should any conflict arise between the terms of this Agreement and any Employer policy, rule, or regulation in effect at the time this Agreement becomes effective, or that are issued after such time, the provisions of this Agreement will govern unless specifically indicated otherwise.

ARTICLE 3: EMPLOYEE RIGHTS

Section 1
General

A. The Employer recognizes and acknowledges the rights of its employees as prescribed in 5 U.S.C. § 7102. Each employee shall have the right to form, join, or assist the Union, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee will be protected in the exercise of such right.

B. Except as otherwise provided under this Agreement, such right includes the right:

1. To act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to the Employer or other appropriate authorities; and
2. To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this Agreement.

C. Consistent with applicable law, the Office of the Inspector General is not subject to this Agreement in the conduct of its investigations.

Section 2
Grievances

A. Consistent with law, an employee may initiate a grievance in good faith freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right.

B. Consistent with this Agreement, law, and government-wide regulations, the Employer will not impose any restraint, interference, coercion, discrimination, or reprisal against any employee in the exercise of his or her right to designate a Union steward for the purpose of representing to the Employer any matter of concern or dissatisfaction, or of representing the employee before any Government agency or official other than the Employer. If the designation of a particular Union steward in a particular matter raises an actual or apparent conflict of interest, then the Parties will follow all laws, government-wide regulations, and case law regarding that steward's participation in the matter. *See, e.g.*, 5 U.S.C. § 7120(e).

Section 3
Voluntary Participation

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

Section 4
Law and Regulation

As with all other applicable laws, the rights and protections established in 5 U.S.C. § 2301(b), Merit Systems Principles, and 5 U.S.C. § 2302(b), Prohibited Personnel Practices, are hereby incorporated into this Article.

Section 5
Lawful Directions

A. An employee must follow lawful supervisory orders, directions, or assignments.

B. In the event an employee questions the legality of a supervisor's order:
1. The employee shall discuss the difference and the basis for it with her or his supervisor with the intent of resolving the difference.
2. If unresolved, the supervisor shall give the instructions to the employee in writing. The Parties agree that if the order is finally determined to be illegal, disciplinary action will be canceled, any sanction imposed will be rescinded, and the employee shall be made whole to the extent permitted by the Back Pay Act.
3. At such time as the employee has complied with the supervisor's order, direction, or assignment, he or she may file a grievance, complaint, or appeal, as appropriate, to seek to remedy any alleged violation of her or his rights.

C. In the event an employee who holds a professional license that is used in the performance of her or his duties at CFTC (*e.g.*, attorneys, CPAs, etc.) reasonably believes that she or he is being directed to take an action that, if performed, would constitute a violation of an applicable ethical rule or rule of professional responsibility that could result in the loss or suspension of his or her professional license or otherwise expose the employee to disciplinary action by a licensing authority, the employee may immediately raise the issue with her or his supervisor. If the supervisor and employee disagree that the action could constitute a violation or expose the employee to disciplinary action, the employee may immediately raise the issue with her or his second-level supervisor. If, after consideration of the employee's ethics assertion, the Employer still directs the employee to take the action, such direction or order will be given to the employee in writing. The employee will be required to comply with the order, direction or assignment, but may file a grievance in accordance with Section 5.B.3 of this Article. The employee may also consult with the body responsible for the enforcement of the Code of Ethics/Professional Responsibility in the State or Jurisdiction in which he or she is licensed. Orders to perform work will not be placed in abeyance pending such advice, but such advice may be considered as evidence in processing any grievance under Section 5.B.3 of this Article.

D. An employee who has questions concerning an interpretation or application of standards of professional conduct is encouraged to raise his or her questions with the CFTC's ethics office.

Section 6
Duty Time for Representational Matters

A. An employee is entitled to a reasonable amount of duty time for meetings for representational purposes with his or her NTEU representative. An employee who wishes to meet with an NTEU representative to discuss representational matters will request prior permission from his or her supervisor. An employee's request for duty time must be consistent with legal requirements. The supervisor shall grant an employee's reasonable request for such time absent a significant staffing or workload problem caused by the employee's absence.

B. If the request is denied, the supervisor will identify the time period, normally within one (1) or two (2) business days, when the employee may meet with his or her Union representative. Upon the employee's request, the Employer may extend any relevant filing deadline by the period of the delay. Nothing in this Section 6 of this Article abrogates an employee's right to union representation.

Section 7
Investigations

A. An employee is entitled to representation by NTEU at any examination of the employee by a representative of the Employer in connection with an investigation if:

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

B. Where an employee is entitled to a representative based on Section 7.A of this Article and requests such representative, an available NTEU representative will be granted official time to attend the meeting. Where an NTEU representative is not immediately available, the Employer will delay the meeting for a reasonable amount of time to allow an NTEU representative to attend. If an employee requests a particular NTEU representative and that representative is not available, the Employer will consider an employee's request to postpone the meeting for a reasonable amount of time for that representative to be available, but any delay will normally be no more than one (1) business day. If no NTEU representative is available, meaning working either via telework or in the office at that location, the Employer will delay the meeting up to two (2) business days.

C. The role of the NTEU representative during such an examination is to:

1. Assist the employee in clarifying the facts or ascertaining other facts that may impact on the matter;
2. Suggest other individuals who may have knowledge of the facts;
3. If he or she chooses, take notes during the examination;
4. If he or she chooses, write down the examiner's name; and

5. Consult with the employee before and during the examination.

The NTEU representative may not disrupt the examination or answer for the employee. To the maximum extent possible, such an examination will be conducted in a private room.

D. At the time that an employee is contacted for such an examination, the employee will be provided with the general subject matter of the examination, unless doing so would undermine the investigation. The employee also will be told whether he or she is the subject of the investigation or is being interviewed as a third-party witness, or whether, based on all available information, the Employer is unable to make a determination as to the employee's status. The employee will further be advised that his or her status could change at any time during the course of the investigation.

E. As part of its responsibilities in this area, the Employer will annually provide the statutory Weingarten notice to all bargaining unit employees via email.

F. At the outset of an interview of an employee who is the subject of an investigation regarding possible criminal conduct, the employee will be provided with one (1) of the following warnings:

1. When the interview is non-custodial, at the beginning of the interview, the Employer will give the employee the following warning: "You are being asked to provide certain information in connection with an official inquiry regarding possible misconduct. The matter under investigation may involve violations of law that could result in criminal prosecution of responsible individuals. This is a request for your voluntary cooperation. You may terminate this interview and leave at any time for any reason. You have the right to remain silent if your answers may tend to incriminate you. Anything you say may be used as evidence against you in an administrative disciplinary proceeding and/or criminal or civil proceedings. If you refuse to answer the questions posed to you because the answers may tend to incriminate you, you cannot be discharged for remaining silent. You have the right to have legal counsel advise you and may confer with counsel before answering any questions or making any statements. You are requested to discuss your testimony or statements only with your attorney or other necessary advisors."

2. When the Employer chooses to request authority from the Department of Justice, and then receives authority from the Department to interview a subject with foreseeable criminal exposure under an express or implied threat that the employee will be discharged if the employee refuses to cooperate in the investigation, the Employer will give the employee a written statement of the Kalkines warning at the beginning of the interview advising the employee that he or she is granted immunity from prosecution for matters disclosed in the interview. This warning shall state: "This is an official administrative inquiry regarding possible misconduct. The purpose of this

interview is to obtain information that will assist in determining whether administrative action is warranted. You will be asked specific questions regarding the performance of your official duties and/or conduct that may affect your capacity to carry out those duties. You have a duty to reply to the questions you are asked and to provide a statement if requested to do so. If you do not answer, or reply fully and truthfully, or if you do not provide a statement as requested, you may be subject to disciplinary action, including removal. Neither your answers nor any information or evidence gained because of your answers or statements can be used against you in a criminal proceeding. However, you may be subject to criminal prosecution if you knowingly and willfully provide a false statement or false information in your answers. In addition, your answers or statements and any information or evidence resulting from your answers or statements may be used in a disciplinary proceeding that could result in disciplinary action, including removal. You have the right to have legal counsel advise you and may confer with counsel before answering any questions or making any statements. You are requested to discuss your testimony or statements only with your attorney or other necessary advisors."

3. The Employer will provide Miranda warnings if and when appropriate.

G. When an employee is given a warning under this Section 7 of this Article, he or she will be given the warning in writing. The Employer may require the employee to sign the acknowledgement indicating receipt and understanding of the warning. Employees will be given a copy of the written warning for their own records. The employee's signature on the acknowledgement will indicate only that the employee actually received and understands the warning and does not constitute an admission of any wrongdoing by the employee.

H. The Employer recognizes that interviews of employees by the Employer's investigative officials generally should be limited to matters of official interest to the Employer and, accordingly, will not address private matters outside the scope of the investigation except where necessary (*e.g.*, when such matters are brought up at the employee's request).

Section 8
Duty Time for Investigations

A. Except as otherwise provided for in this Agreement, an employee who is the subject of an examination will receive duty time, in accordance with Article 3 of this Agreement (Employee Rights), including travel reimbursement for any authorized travel to and attendance at the following:

1. Grievance meetings with the Employer;
2. Arbitration hearings;
3. Oral reply meetings for a notice of proposed disciplinary or adverse action;
4. An adverse action hearing, if the employee is still employed by the Employer;

5. Other statutory appeal hearings, if the employee is still employed by the Employer; and
6. An examination by a representative of the Employer in connection with an investigation which may lead to disciplinary action against that employee.

Section 9
Resignation

A. The question whether, and on what date, to resign is a voluntary matter of free choice for each employee. When an employee is faced with the prospect of Employer-initiated action such as termination or removal, the employee shall have the right not to resign or, if the employee chooses, to make a resignation effective at any time prior to the effective date of the Employer's action.

B. Employees may consult with a Union representative prior to making a decision regarding resignation and, consistent with staffing needs, will be released on duty time to do so.

C. Consistent with applicable law, no resignation shall be secured by the Employer by coercive, deceptive, or other involuntary means.

D. An employee may withdraw his or her resignation at any time before it has become effective. The Employer may decline a request to withdraw a resignation before its effective date only when the Employer has a valid reason (*e.g.*, has made a selection to fill the position) and explains that reason in writing to the employee.

ARTICLE 4: UNION RIGHTS

Section 1
Exclusive Representative

NTEU is the exclusive representative of the employees in the bargaining unit and is entitled to act for, and represent the interests of, all employees in the bargaining unit. NTEU shall have the right to present its views, either orally or in writing, to the Employer's designee on any matter concerning personnel policies and practices affecting working conditions of bargaining unit employees.

Section 2
Formal Discussions

A. NTEU has the right to attend and send a representative of its own choosing, at no cost to the Employer, to any formal discussion between the Employer and one (1) or more employees in the bargaining unit or their representatives concerning any grievance or any personnel policy or practice or other general conditions of employment.

B. The Employer will give not less than two (2) business days' advance notice to the Union, or other individual designated in writing by NTEU, when a formal discussion is scheduled. Such notice will include the date, time, location, and the general subject matter of the formal discussion, and a copy of any agenda if one has been prepared at that time. This advance notice will be given unless the Employer is unable to do so because of exigent circumstances, in which case the Employer will notify the Union as soon as the Employer knows a meeting will be conducted. The Union will notify the Employer in advance that an NTEU representative will be present at the formal discussion. Where NTEU notifies the Employer that an NTEU representative will be present, the Employer representative conducting the formal discussion will acknowledge the NTEU representative. The Union will normally give not less than one (1) day advance notice to the Employer that an NTEU representative will be present at the formal discussion. The NTEU representative may ask questions and present a brief statement before the end of the formal discussion outlining NTEU's position concerning the issues addressed at the formal discussion.

C. When the Union has been notified in advance about a formal meeting, the meeting will not be delayed or rescheduled due to the unavailability of a specific NTEU representative.

Section 3
Representation

Consistent with law, NTEU may refuse to represent employees in proposed disciplinary actions and in statutory appeals (*e.g.*, adverse actions, unacceptable performance actions, equal employment opportunity (EEO) complaints, and reduction in force (RIF) appeals).

Section 4
EEO

A. To the extent not prohibited by law, the Union may attend formal EEO complaint settlement meetings, as follows:

1. The Union will be notified of and be allowed to attend such meetings subject to the employee's assent.
2. Where the Union does not attend an EEO complaint settlement meeting (either formal or informal) for any reason, and the settlement agreement impacts the conditions of employment of bargaining unit employees (*e.g.*, concerns an office move or grants a priority consideration for a promotion), the settlement agreement will contain the following statement:
   "This settlement agreement is subject to review for compliance with negotiated agreements between CFTC and NTEU. Accordingly, it will be forwarded to the Union for a ten (10) day period of consideration. If NTEU alleges the settlement conflicts with any negotiated agreements between CFTC and NTEU or other non-discretionary requirements, you will be notified."
3. Settlement agreements under this Section 4 of this Article shall be sent to the Union via e-mail or a similar means that permits verification of receipt. However, sensitive personally identifiable information (PII) and medical information contained in the settlement agreements will be redacted in accordance with the law. The parties agree that all EEO complaint and settlement information (concerning such EEO complaints) must be kept confidential.
4. Any challenges by the Union to EEO settlement agreements will be filed with CFTC's Office of Workforce Relations.

ARTICLE 5: EMPLOYER RIGHTS

Section 1
Statute

The Employer has the authorities and rights set forth in 5 U.S.C. § 7106.

Section 2
Management Rights

A. Nothing in this Agreement shall affect the authority of any management official of the Agency:

1. To determine the mission, budget, organization, number of employees, and internal security practices of the agency; and
2. In accordance with applicable laws:
   (a) To hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or to take other disciplinary action against such employees;
   (b) To assign work, to make determinations with respect to contracting out, and to determine the personnel by which the agency's operations shall be conducted;
   (c) With respect to filling positions, to make selections for appointments from:
   (i) Among properly ranked and certified candidates for promotions; or
   (ii) Any other appropriate source; and
   (d) To take whatever actions may be necessary to carry out the agency mission during emergencies.

Section 3
Bargaining

A. Nothing in this Agreement shall preclude the Employer and the Union from negotiating:

1. At the election of the Employer, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;
2. Procedures which management officials of the Employer will observe in exercising any authority under 5 U.S.C. § 7106; or
3. Appropriate arrangements for employees adversely affected by the exercise of any authority under 5 U.S.C. § 7106 by such management officials.

ARTICLE 6: MIDTERM BARGAINING

Section 1
CFTC Initiated Bargaining

A. Consistent with law, the Employer has the right to exercise management rights as set forth in the 5 U.S.C. Chapter 71 during the life of this Agreement and, in accordance with applicable law, rule, regulation, and this Agreement, to initiate changes that may affect conditions of employment of bargaining unit employees. The Employer will provide advance written notice, prior to the date of the proposed change, to the NTEU National President and a concurrent copy to the Chapter President.

B. The written notice of proposed changes will comply with the specificity requirements of the law and include, at a minimum, the following information:

1. A description of the proposed change and the anticipated implementation date;
2. A description of the impact of the change on the affected group of employees in the bargaining unit; and
3. An explanation of how this change will be implemented.

C. In addition to bargaining issues noticed to the Union pursuant to Section 1.A of this Article, the Employer may propose up to three (3) new articles at any point following a six (6) month moratorium from the effective date of the original term of this Agreement. These proposals may address matters that are substantively negotiable and that are not covered by this Agreement. In the event this Agreement automatically renews in accordance with Article 48 of this Agreement (Duration), the Employer may propose one (1) new article (*i.e.*, not already covered in this Agreement) per year in each year this Agreement automatically renews.

Section 2
Response, Negotiations and Ground Rules

A. The Union may submit written proposals to the Employer after receiving notice from the Employer. Such proposals shall be submitted within 15 calendar days from receipt of the Employer’s notice of a proposed change. The Union's proposals will relate to the proposed changes and will not address extraneous matters. However, if the Union receives new information regarding the proposed change that is subsequently substantiated by the Employer, then it may submit new proposals concerning that information.

B. If the Union submits written proposals, the Parties will meet at a mutually agreeable time and place to begin negotiations within 15 calendar days of the Employer's receipt of the Union's proposals. Negotiations will be conducted during the regular business days and hours of the office where the negotiations are taking place, unless otherwise agreed to by the Parties.

C. In accordance with 5 U.S.C. § 7131, the Union will be authorized to have a number of representatives on official time for the conduct of negotiations equal to the number of the Employer's representatives throughout the bargaining process (*i.e.*, through impasse proceedings). It is understood that the presence of any NTEU National Staff will not contribute to the calculation of the number of representatives on the Union's negotiating team.

D. The Parties may agree to reasonable extensions of time under this Article provided that the total time does not cause an unreasonable delay or impede the Employer from lawfully exercising its management rights.

E. In the event of an impasse in negotiations, the Parties will resolve the collective bargaining dispute pursuant to 5 U.S.C. § 7119 (Federal Mediation and Conciliation Service and, if necessary, the Federal Service Impasses Panel).

F. Except as permitted by law, the Employer will not implement the proposed change prior to completing the bargaining process.

Section 3
Union Initiated Bargaining

In addition to bargaining pursuant to Section 1.A of this Article, the Union may propose up to three (3) new articles at any point following a six (6) month moratorium from the effective date of the original term of this Agreement. These proposals may address matters that are substantively negotiable (*i.e.*, to exclude matters reserved to management by law and to negotiate permissive subjects of bargaining only at the Employer's election) and that are not covered by this Agreement. In the event this Agreement automatically renews in accordance with Article 48 of this Agreement (Duration), the Union may propose one (1) new article (*i.e.*, not already covered in this Agreement) per year in each year this Agreement automatically renews.

ARTICLE 7: WORK SCHEDULES AND CREDIT HOURS

Section 1
Administrative Workweek

The present administrative workweek begins at 12:01 a.m. Sunday and ends at 12:00 midnight Saturday, and the current basic workweek and normal tour of duty within the administrative workweek is five (5) eight (8) hour workdays. Prior to implementing a change in any regularly scheduled workweek, the Employer will notify the Union as far in advance as possible and bargain pursuant to Article 6 of this Agreement (Midterm Bargaining).

Section 2
Default Schedule (Non-Flexible)

The default basic work schedule is an eight (8) hour workday, Monday through Friday, with the same set daily arrival and departure times that are scheduled within the established flexible time bands.

Section 3
Core Hours

The Employer's core hours are the established duty hours within a specified tour of duty during which every full-time employee (who is not on an approved absence) is required to be at work. The core hours during which every full-time employee must be scheduled to work are 9:30 a.m. to 3:00 p.m., in the office's respective time zone, Monday through Friday.

Section 4
30-Minute Unpaid Lunch Break

All full-time work schedules, and part-time work schedules in which an employee works more than six (6) hours on a given day, must include one (1) unpaid 30-minute lunch break per workday, which extends the employee's work day by 30 minutes.

Section 5
Flexible (Arrival and Departure) Time Bands

A. The Employer's flexible hours or bands are the established duty hours within which an employee may request to schedule his or her arrival and departure times for a specific flexible work schedule or compressed work schedule, so as to create a set tour of duty that varies from his or her office's official business hours. All times are local times. The flexible bands for specific schedules are as follows:

Flexible (Arrival and Departure) Time Bands (continued):

Schedule	Arrival	Departure
Flexitour and Gliding:	6:30 a.m. to 9:30 a.m.	3:00 p.m. to 7:00 p.m.
Maxiflex:	6:00 a.m. to 9:30 a.m.	3:00 p.m. to 7:00 p.m.
5-4/9 Comp. Work Schedule:	6:00 a.m. to 8:30 a.m.	3:30 p.m. to 6:00 p.m.
4-10 Comp. Work Schedule:	6:00 a.m. to 7:30 a.m.	4:30 p.m. to 6:00 p.m.

B. For employees on a flexitour, gliding, or maxiflex work schedule (as defined below), the flexible time band for earning credit hours that have been approved in accordance with Section 7 of this Article is from 6:00 a.m. to 10:00 p.m. local time.

Section 6
Alternative Work Schedules

The following alternative work schedules will be available to bargaining unit employees:

A. Flexible Work Schedule (Flexitour) with Credit Hours.
   1. A full-time employee on this work schedule has an 80-hour bi-weekly basic work requirement and fulfills that requirement by working eight (8) hours and 30 minutes (unpaid lunch period) a day, Monday-Friday. The employee must be present for work (or account for time away from work with approved leave or credit hours) during all of the office's designated core hours, but may request set arrival and departure times within the established flexible bands.
   2. A part-time employee on this work schedule has a 32-to-64-hour bi-weekly basic work requirement. To fulfill that requirement, he or she may work up to eight (8) hours a day, Monday-Friday. The employee may request set arrival and departure times within the established flexible bands consistent with being present for work during at least half of his or her office's designated core hours on the days he or she is scheduled to work.
   3. In a given week or pay period, an employee on this work schedule may request that the Employer approve additional hours to his or her basic work requirement (credit hours) to allow him or her to be absent an equal number of hours with no loss of basic pay.

B. Compressed Work Schedules.
   1. 5-4/9 Compressed Work Schedules. A full-time employee on this work schedule will fulfill his or her 80-hour basic work requirement in a bi-weekly period over nine (9) workdays. An employee works nine (9) hours on eight (8) of the workdays and eight (8) hours the other workday. The same day in each pay period must be elected as the non-workday.
   2. 4-10 Compressed Work Schedules. A full-time employee on this work schedule will fulfill his or her 80-hour basic work requirement in a bi-weekly period over eight (8)

workdays. An employee works four (4) 10-hour days each week. The same day in each week must be elected as the non-workday. The employee must be present for work during the office's designated core hours on scheduled workdays, but may request set arrival and departure times within the established flexible bands.

3. A part-time employee on this work schedule may fulfill his or her 32-to-64-hour basic work requirement in fewer than ten (10) workdays and may request to work more than eight (8) hours (up to ten (10) hours) on any given day(s) of his or her approved work schedule.
4. Employees on a compressed schedule may not earn credit hours.

C. Gliding Work Schedule. A gliding work schedule is a type of flexible work schedule in which a full time employee:

1. Must meet a basic work requirement of eight (8) hours a day and 40 hours in each week and 80 hours in a bi-weekly pay period;
2. Must be present during the hours designated as core hours by this Article;
3. Without prior notice, may change start and stop times daily within the flexible time bands established by this Article; and
4. May earn and use credit hours consistent with Section 7 of this Article.

D. Maxiflex Work Schedule.

1. A full-time employee on a maxiflex work schedule may designate a recurring work schedule in which he or she fulfills his or her 80-hour basic work requirement in a bi-weekly period over fewer than ten (10) workdays, but not less than eight (8) workdays. Within his or her recurring work schedule, an employee:
   (a) Must meet the basic work requirement (reflect 80 hours) per bi-weekly pay period (excluding credit hours earned);
   (b) Must provide the Employer with expected arrival and departure work times within the flexible time bands established by Section 5 of this Article, consistent with the duties and requirements of the position;
   (c) May not include non-core workdays (*i.e.*, Saturday or Sunday) in the 80 hour bi-weekly work requirement;
   (d) Is limited to a maximum of ten (10) hours per day toward meeting the basic work requirement, Monday-Friday; however, in any individual day, an employee may work up to two (2) credit hours during the flexible band for earning credit hours in Section 5 of this Article so long as the employee's regular tour of duty hours combined with the credit hours do not exceed 12 hours per day;
   (e) Must reflect the core hours plus the flexible hours to be worked each workday the employee is scheduled to work;
   (f) Must schedule and work the core hours on at least eight (8) of the ten (10) workdays in each bi-weekly pay period; and
   (g) May earn a maximum of four (4) credit hours on non-core workdays (*i.e.*, Saturday or Sunday), holidays, and other non-workdays, to the extent permitted by law.

Section 7
Credit Hours

A. An employee on a flexitour, gliding, or maxiflex work schedule may earn and use credit hours consistent with this Section 7 of this Article. Employees on a compressed schedule may not earn credit hours.

B. Employees must earn credit hours in the week prior to when they are used.

C. An employee's request to earn credit hours must normally be approved in advance by the employee's supervisor. The Employer may, in its discretion, approve credit hours retroactively. In the event of denial, the Employer will provide the employee with the reasons for the denial. At the employee's request, the reasons for the denial shall be in writing. Nothing contained herein shall prevent a supervisor and employee from entering into a written understanding that authorizes the employee to work credit hours for certain types of work, which shall constitute ongoing prior approval of credit hours. At its discretion, the Employer may require an employee to account for the work performed on credit hours. Such requests will be not be unreasonable in nature and will be consistent with the level of scrutiny that is common during performance of the employee's basic work requirement.

D. Other than employees on compressed work schedules, an employee on a flexitour, gliding, or maxiflex schedule may request to earn up to two (2) credit hours per workday. Employees may also earn up to four (4) credit hours on a non-workday weekend (Saturday or Sunday) or on a holiday. An employee may not earn credit hours during an excused absence.

E. An employee may request to earn credit hours in 15-minute increments, subject to a 30-minute minimum. A full-time employee may earn up to 24 credit hours in a pay period. The number of credit hours a part-time employee may earn is equal to not more than 25% of the hours in the employee's normal bi-weekly schedule. A full-time employee may carry over up to 24 credit hours from one (1) pay period to the next. The number of hours a part-time employee may carry over is equal to the number of hours worked per pay period divided by four (4).

F. An employee will not be compensated for excess credit hours that cannot be carried over.

G. Although an employee may request to work credit hours on weekends, and before and after his or her tour of duty, the Parties recognize that building services (*e.g.*, heating, air conditioning, ventilation) may not be available during such times. Therefore, an employee who earns credit hours during these times may do so at his or her own inconvenience and/or at his or her approved telework location.

H. On occasion and for a specific reason, an employee may request telework on a weekend day so that the employee may earn credit hours. Such requests must be approved in advance.

I. Absent approval, earned credit hours cannot be scheduled by employees to create a regular, recurring work schedule.

J. The credit hours earned may be used by employees with prior approval of the Employer. Supervisors shall make reasonable efforts to grant employees' requests to use credit hours consistent with workload and staffing needs.

Section 8
Minimum Days in the Office Where the Employee is on Recurring Telework and Earns Credit Hours

Absent use of at least eight (8) hours of annual or sick leave, administrative leave, unscheduled telework (or other exceptions identified in Article 11 of this Agreement (Telework), or where the employee is out of the office for a holiday, employees are required to be present in the office not less than three (3) days per week during core hours, regardless of the combination of telework, credit hour use, and alternate work schedules. Employees who plan to use credit hours will be required to forfeit a corresponding telework day, or portion thereof, when necessary to meet the above requirements.

Section 9
Eligibility and Request for Alternate Work Schedule

A. An employee may request an alternative work schedule under this Article if he or she:
1. Is not on a performance improvement plan and does not have any significant performance weaknesses communicated to the employee in writing, has a most recent performance rating of satisfactory, and there is no reasonable cause to believe that his or her level of performance will drop;
2. Is not under leave restriction; and
3. Does not have significant documented time or attendance issues communicated to the employee in writing in the preceding six (6) months.

B. If an employee's status changes to include any of the items in Section 9.A of this Article, the Employer may temporarily modify the employee's schedule to include either another alternative work schedule or the default schedule in Section 2 of this Article.

C. An employee wishing to work a flexible or compressed work schedule will submit in writing his or her proposed work schedule to his or her supervisor. The Employer will respond to a request for a flexible work schedule within 14 calendar days. In the event of denial, upon the employee's request, the Employer will provide the employee with reasons for the denial in writing.

D. If all employees' choices of an alternative work schedule cannot be accommodated, alternative work schedules will be granted first to employees by series, grade, and seniority within the Division or Operating section.

Section 10
Changes to Work Schedule

A. An employee may submit a written request to work a different schedule at any time. The employee must provide at least 14 calendar days' notice of the proposed change. If approved, the employee's new regular schedule will begin with the next full pay period after approval. In the event of denial, the Employer will provide the employee with reasons for the denial in writing within 14 calendar days of the request.

B. On an ad hoc basis, an employee may request to change his or her non-workday to another workday in the same pay period, as long as the change does not interfere with the Employer's mission or workload requirements. Requests to do this may also be made in advance (*e.g.*, four (4) or five (5) weeks in advance).

C. The Employer may change an employee's work schedule or his or her regular day off for 30 days or less because of mission, staffing, or workload requirements (such as training or travel requirements). The Employer may consider an employee's stated preference with regard to such changes by the Employer under this Section 10.C of this Article. The Employer will strive to give the employee at least one (1) week notice of such a temporary change.

D. Employer-Proposed Changes or Modifications to Existing Alternative Work Schedule Programs.

1. In the event the Employer determines that any Division or Operating section that is participating in a flexible work schedule or compressed work schedule is being substantially disrupted in carrying out its function because of such participation, it may propose to modify, but not terminate, the alternative work schedules. In such circumstances, the Employer will provide the Chapter with notice pursuant to Article 6 of this Agreement (Midterm Bargaining) and fulfill its obligation to negotiate.
2. Consistent with applicable law, rule, and regulation, the Employer may provide notice to the Chapter that it seeks to permanently terminate an alternative work schedule based on a finding by the CFTC head that such alternative work schedule has caused an adverse agency impact (*i.e.*, reduction in productivity, increased costs, or diminished level of service to the public). The notice to the Chapter will include a copy of the CFTC head's finding of adverse agency impact. The Parties will negotiate consistent with Article 6 of this Agreement (Midterm Bargaining) over the Employer's proposal.

Section 11
Rescheduling Flex or Compressed Day Off

Except in the case of unforeseen contingencies, an employee working an approved alternative work schedule will not be expected to forego a regularly scheduled day off. If an employee must forego his or her regularly scheduled day(s) off, it will normally be rescheduled, based on the employee's stated preference, for another workday(s) in the same pay period. If another day off cannot be rescheduled within the same pay period, the employee will be provided overtime or compensatory time, as required by law, for the additional day(s) worked.

Section 12
Holidays

A. An employee working a compressed 5-4/9 or 4-10 work schedule is entitled to basic pay for the number of hours of the work schedule that fall on a holiday. When a legal holiday falls on a workday, the employee will be excused with pay and without charge to leave for the number of duty hours scheduled that day.

B. When a legal holiday falls on a scheduled regular day off, an employee working a compressed 5-4/9 or 4-10 work schedule is entitled to an "in lieu of holiday." An "in lieu of holiday" is the same as a legal public holiday for pay and leave purposes. The number of hours of paid holiday leave granted on an "in lieu of holiday" is the number of hours the employee would otherwise have worked that day. "In lieu of holidays" always will be the workday proceeding the normal holiday, unless a holiday falls on a Monday, in which case the "in lieu of holiday" will be the following workday. No "in lieu of holiday" will be granted when administrative leave is approved because of bad weather or other emergency conditions on an employee's regular day off.

C. By law, an employee on a maxiflex work schedule will only earn eight (8) hours holiday pay on a holiday. Such employee will either have to take appropriate leave (including credit hours earned) for the 9th or 10th hour or the employee may adjust his or her work schedule for that pay period only to work the additional hour(s). Such additional hour(s) must be completed during the regular or credit hour tour of duty hours in that pay period.

D. When an employee is absent from the job other than for a holiday, he or she will be charged with leave equal in hours to the scheduled length of his or her work day.

ARTICLE 8: OUTSIDE EMPLOYMENT

Section 1
General

An employee who seeks to engage in outside employment or volunteer activities (as defined by government-wide regulations, 5 C.F.R. § 2635, and 5 C.F.R. § 5101.103) may do so once the request has been approved by the Employer. The employee must comply with all applicable ethics regulations, including any CFTC-issued supplemental ethics regulations, in engaging in outside employment and/or volunteer activity.

Section 2
Request for Outside Employment

A. To obtain approval of outside employment, the employee must submit a CFTC Form 20 to her or his supervisor. The Employer will approve or disapprove an employee's written request to engage in outside employment as soon as possible, but not later than 15 business days from the receipt of the employee's fully completed request. The Employer shall approve such a request upon a determination that the outside employment or volunteer activity is not expected to involve work or conduct that is prohibited by statute or federal regulations, including 5 C.F.R. § 2635 and 5 C.F.R. § 5101.103.

B. Where the outside activity requires the approval for publication or dissemination of a personally-authored paper, the CFTC procedure "Review of Papers or Other Written Material Authored by Commission Employees, Experts, Consultants, Interns, Law Clerks and Volunteers in Their Personal Capacity" will apply.

Section 3
Denial and Reconsideration

A. If the request is denied, the Employer will include a statement of its reasons for disapproving the request. If a response from the Employer is not received within the period prescribed, the request will be considered denied.

B. If the request is denied, the Employee may request reconsideration by the designated ethics official who will make a determination within 10 business days of the request or upon the employee providing additional information if requested by the designated ethics official.

ARTICLE 9: PART-TIME EMPLOYMENT

Section 1
General

A. The Employer recognizes the principles of the Federal Employees Part-Time Career Employment Act of 1978, 5 U.S.C. §§ 3401-3408, which provides for increased part-time career employment opportunities in the federal service, and the Employer will comply with the requirements of this Act and the implementing regulations, 5 C.F.R. Part 340.

B. The Employer and the Union acknowledge that employees may request part-time employment for reasons including, but not limited to, family responsibilities, education, medical conditions, and gradual transition to retirement.

C. A part-time permanent employee is eligible for benefits in accordance with government-wide regulations, which provide the same benefits as a full-time employee but on a pro-rated basis (*e.g*., leave, retirement, and health and life insurance coverage).

D. Before an employee seeks part-time employment under this Article, she or he may use reasonable duty time to review Office of Personnel Management (OPM) material, laws, and regulations on part-time employment to determine the impact of such an assignment on the following: health and life insurance; promotion potential; pay issues; leave; retirement; and reductions in force.

Section 2
Job Sharing

When a position must be staffed on a full-time basis, job sharing may be an option. The hours of two (2) employees in part-time positions are arranged to cover the duties of a single full-time position. Job sharing may not necessarily mean that each job sharer works half-time or that the total number of hours is 40 per week. Such work hours must be consistent with law and approved by the Employer in advance.

Section 3
Procedure for Requesting Part-Time Employment or Job Sharing

A. An employee wishing to work part-time or to share the duties and responsibilities of a position will submit a written request to his or her immediate supervisor. The employee's request will indicate the preferred schedule (no fewer than 16 hours and no more than 32 hours per week for part-time employment) and duration, and also may include a general reason for the requested part-time employment or job sharing.

B. Employee requests to work a part-time schedule or to job share will be decided by the Employer within 14 calendar days of the request unless additional information is needed by the Employer to make the decision. The Employer's decision will be based on staffing, workload, mission, or other legitimate business reasons. In the event the request is denied, the Employer will provide the employee with reasons for the denial in writing.

Section 4
Return to Full-Time Employment

A. An employee approved for a part-time schedule for a period of three (3) months or less may return to full-time employment at the conclusion of the approved period of part-time employment.

B. Employee requests to return to a full-time schedule from a period of part-time employment or job sharing of more than three (3) months will be decided within 14 days of the request to return to a full-time schedule. The Employer's decision will be based on staffing, workload, mission, or other legitimate business reasons. The Employer will give consideration to an employee's request for pre-approval of his or her return to a full-time schedule from a period of part-time employment of more than three (3) months to complete college or graduate course work.

C. With four (4) weeks advanced written notice, full-time employees who have been given permission to work a part-time schedule may be required to return to a full-time schedule if the part-time arrangement interferes with the Employer's ability to meet mission, staffing, or workload requirements.

Section 5
No Abolition of Positions

The Employer will 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 basis.

Section 6
Not a Condition of Continued Employment

An employee who is employed on a full-time basis will not be required to accept part-time employment as a condition of continued employment.

Section 7
Promotions

A. An employee's part-time status will not preclude him or her from consideration for any promotion, including, but not limited to, career ladder promotions in accordance with Article 17

of this Agreement (Career Ladder Promotions) and merit promotions to a position requiring a full-time schedule.

B. In accordance with law, rule, regulations, and OPM guidance, permanent part-time employees must meet qualifications requirements and time-in-grade requirements for promotions. One (1) year of part-time employment satisfies the one (1) year time-in-grade restrictions on advancement. Part-time work will be pro-rated in crediting experience. Creditable experience should be determined on the basis of hours in a pay status.

Section 8
Years of Service

A. In accordance with law, rule, regulations, and OPM guidance, part-time employees shall earn a full year of service for each calendar year worked (regardless of schedule) for the purpose of computing dates for the following:

1. Retirement eligibility;
2. Career tenure;
3. Completion of probationary period;
4. Pay increases;
5. Change in leave category; and
6. Time-in-grade restrictions on advancement.

Section 9
Holidays

A part-time employee is entitled to a holiday when the holiday falls on a day when he or she would otherwise be required to work or take leave, excluding overtime work. Part-time employees who are excused from work on a holiday receive their rate of basic pay for the hours they are regularly scheduled to work on that day, not to exceed eight (8) hours unless on a compressed work schedule. If a holiday falls on a non-workday, part-time employees are not entitled to an "in lieu of holiday." If the Employer's office or facility is closed due to an "in lieu of holiday" for full-time employees, the Employer will grant paid excused absence to part-time employees who are otherwise scheduled to work on that day, not to exceed eight (8) hours unless on a compressed work schedule.

ARTICLE 10: OVERTIME, COMPENSATORY TIME OFF, AND HOLIDAY PREMIUM PAY

Section 1
General

A. An employee will be compensated for overtime work in accordance with all applicable laws, rules, regulations, and this Article. The Employer will not expect or require an employee to donate time in lieu of proper compensation for work performed in excess of their basic work requirement.

B. Employees on alternative work schedules may occasionally be required to adjust their work schedules to accommodate work projects that cannot be completed within their scheduled workday or workweek in order to mitigate potential costs of assigning overtime.

C. Overtime pay and/or compensatory time off should generally not be requested solely to mitigate an employee's failure to appropriately manage his or her regular duty time in order to complete assigned tasks.

D. Credit hours are covered in Article 7 of this Agreement (Work Schedules and Credit Hours).

Section 2
Overtime Pay

A. Overtime pay provided under Title 5 of the United States Code (U.S.C.) is pay for hours of work officially ordered or approved in excess of eight (8) hours in a day, 40 hours in an administrative workweek, 80 hours in a pay period, depending on the employee's administrative workweek and corresponding work schedule, or where otherwise required as a matter of law.

B. Overtime is paid either as compensation or compensatory time off. The manner in which it is paid depends on a number of factors, including whether the employee is covered by the Fair Labor Standards Act of 1938, as amended (FLSA), whether the overtime is regularly scheduled or is irregular and occasional, and the employee's work schedule.

C. Overtime is earned and used in 15 minute increments.

D. Calculating Overtime.

1. FLSA Exempt (Not covered - generally those at the CT 9 level and above).
   (a) Except as required by law, an FLSA exempt employee may only be credited with compensatory time off for overtime worked.

2. FLSA Non-exempt (Covered - generally those at the CT 8 level and below).
   (a) Except as required by law, an employee who is FLSA non-exempt is entitled to overtime pay for overtime worked unless he or she requests compensatory time off instead.
   (b) The overtime hourly rate for an employee who is FLSA non-exempt is the employee's hourly rate of basic pay multiplied by 1.5.

Section 3
Compensatory Time Off

A. Compensatory time off is approved time off in lieu of overtime pay.

B. Compensatory time off is earned and used in 15-minute increments.

C. Compensatory time off may be used for absences during the employee's work schedule, consistent with the approval process established for using leave.

D. At the employee's election, approved absences may be charged to annual leave even if the employee has a balance of compensatory time off. Employees should give consideration to the expiration dates of compensatory time off and the "use or lose" deadline for annual leave when deciding which category of personal leave to use.

E. Calculating Amounts of Compensatory Time.
   1. FLSA Exempt (Not covered - generally those at the CT 9 level and above).
      (a) Regular compensatory time off earned by working overtime hours is considered equivalent to premium pay for FLSA-exempt employees. The amount of compensatory time off that may be earned is subject to the limitations in the compensation policy.
      (b) If an FLSA exempt employee does not use compensatory time off within 26 pay periods from the pay period in which it was earned, the compensatory time off will be forfeited except where otherwise provided by 5 C.F.R. § 550.114.

   2. FLSA non-exempt (Covered - generally those at the CT 8 level and below).
      (a) There are no statutory bi-weekly limits on the amount of overtime pay or compensatory time off that an FLSA non-exempt employee can earn. However, the amount of compensatory time off that FLSA covered employees may earn is subject to the limitations in the compensation policy. Overtime is paid at the overtime rate in effect when the hours were earned.
      (b) If an FLSA non-exempt employee does not use compensatory time off within 26 pay periods from the pay period in which it was earned, the employee will be paid overtime pay for the compensatory time off at the overtime rate in effect when the compensatory time was earned.

Section 4
Approval of Overtime and Compensatory Time Off

A. Overtime work must generally be ordered and approved in advance and in writing by a management official with authority to approve the overtime.

B. FLSA Exempt (Not covered - generally those at the CT 9 level and above).

1. An employee exempt from the FLSA, who is officially ordered or approved, in advance and in writing, by the Employer to perform overtime work on a given day will receive an appropriate amount of overtime pay or compensatory time off.
2. Where approval cannot reasonably be obtained in advance, and the employee's failure to perform overtime work that is due immediately would adversely impact the CFTC's mission, the Employer will approve an employee's request for overtime pay or compensatory time off after the hours have been worked if the Employer determines that the overtime worked would have been ordered or required in advance. Employees should notify their supervisor in writing (*e.g.*, email) as soon as practicable after performing such work, but in no event later than two (2) business days from the date of the overtime worked. If necessary, the employee will provide a written explanation as to why such hours would have been ordered or required in advance.

C. FLSA Non-Exempt (Covered - generally those at the CT 8 level and below).

1. A non-exempt employee covered by the FLSA is entitled to overtime pay for overtime worked unless he or she requests compensatory time off instead. Such requests must be submitted to their supervisor via email and recorded in the Employer's electronic time and attendance system.
2. Where approval cannot reasonably be obtained in advance, and the employee's failure to perform overtime work that is due immediately would adversely impact the CFTC's mission, the Employer will approve an employee's request for overtime pay or compensatory time off after the hours have been worked if the Employer determines that the overtime worked would have been ordered or required in advance. Employees should notify their supervisor in writing (*e.g.*, email) as soon as practicable after performing such work, but in no event later than two (2) business days from the date of the overtime worked. If necessary, the employee will provide a written explanation as to why such hours would have been ordered or required in advance.
3. Any claims to "suffered or permitted" overtime must be raised in writing (*e.g.*, email) no later than two (2) business days from the date the overtime is worked. No employees on flexible schedules are entitled to "suffered and permitted" overtime.

Section 5
Assignment of Overtime

A. When overtime work or work on a federal holiday is required in relation to a specific ongoing work assignment (*e.g.*, continuing work on a legal brief, rulemaking, enforcement investigation, inspection or reviewing/examining a filing, etc.), the Employer generally will assign the work to the specific employee or employees who have been working on that assignment.

B. When overtime work is required on an assignment that is not of an ongoing nature, volunteers will be solicited. If there are more equally qualified volunteers than needed, overtime will be assigned to employees in order of seniority. For the purpose of this Article, seniority is defined as time employed with CFTC. If there are less equally qualified volunteers than needed, overtime will be assigned in reverse seniority order.

C. Except for ongoing assignments scheduled pursuant to Section 5.A of this Article, the following procedures will apply:

1. When overtime is required, the Employer first will determine which employees within the work unit where the assignment is to be completed are qualified to do the overtime assignment. The Employer then will seek volunteers from that group of employees.
2. If the method described in Section 5.C.1 of this Article results in more volunteers than needed, the Employer will make the overtime assignment(s) from that group on a rotational basis starting with the employee with the greatest seniority.
3. If the method described in Section 5.C.1 of this Article does not result in sufficient qualified volunteers, the Employer will make the overtime assignment(s) from that group on a rotational basis starting with the employee with the least seniority.
4. With respect to an employee assigned to overtime work pursuant to Sections 5.C.2 or 5.C.3 of this Article, the Employer agrees to reasonably consider a written request by an employee to be excused from the overtime assignment where:
   (a) The employee has found a qualified replacement (one from the group of qualified employees initially determined by the Employer) who is available and willing to work; or
   (b) Based on a demonstrated personal hardship. A "personal hardship" for the purpose of this Article consists of a significant difficulty or expense resulting from the overtime assignment (*e.g.*, required change in schedule results in inability to meet daycare pick-up and drop off timeframes).

Section 6
Notice of Overtime Work

The Employer will provide an employee with as much advance notice as possible of an overtime assignment. If the need for overtime work can be reasonably foreseen, the Employer will normally provide at least three (3) business days' notice. With respect to assignments to be worked on federal holidays, the Employer will strive to provide as much notice as practicable.

Section 7
No Excessive Periods of Overtime

The Employer will seek to avoid overtime assignments that result in an employee working excessively long periods without a day off.

Section 8
Overtime and Compensatory Time Record-Keeping

The Employer will maintain appropriate records regarding the authorization of overtime pay, compensatory time off, holiday, and holiday premium pay.

Section 9
Work on a Federal Holiday

A. Full-time employees who are not required to work on a federal holiday will receive their rate of basic pay for the applicable number of holiday hours equal to their work schedule for that day. Employees must be in a pay status or a paid time off status (*i.e.*, leave, compensatory time off, compensatory time off for travel, or credit hours) on their scheduled workdays either before or after a holiday in order to be entitled to holiday leave for that day. Employees who are in a non-pay status for the workdays immediately before and after a federal holiday may not receive holiday leave for that holiday and will be in a non-pay status.

B. Holiday work means non-overtime work performed by employees during their regular work schedule on a federal holiday. Non-overtime work includes official duties, but ordinarily does not include hours spent traveling or in training.

C. Federal Holiday Premium Pay.

1. For each hour of holiday work, employees receive holiday premium pay. Holiday premium pay is equal to an employee's rate of basic pay. Employees who are required to work on a holiday receive their rate of basic pay, plus holiday premium pay, for each hour of holiday work subject to the limitations in Section D.4 of this Article. (*See* 5 U.S.C. § 5546(b).)

2. Employees who are required to work during basic (non-overtime) holiday hours are entitled to a minimum of two (2) hours of holiday premium pay. (*See* 5 U.S.C. § 5546(c).)
3. Standard (40 Hour/five (5) Day Week) Work Schedules. Employees are entitled to holiday premium pay if they are required to work on a federal holiday during their regularly scheduled tours of duty, not to exceed eight (8) hours.
4. Flexible Work Schedules. Employees under flexible work schedules are entitled to holiday premium pay if they are required to work during the hours of their "basic work requirement" (*i.e.*, non-overtime hours) on that day, not to exceed eight (8) hours.
5. Compressed Work Schedules. Employees under compressed work schedules are entitled to holiday premium pay if they are required to work during their basic work requirement on that day. The number of hours of holiday premium pay may not exceed the hours in an employee's compressed work schedule for that day (*e.g.*, eight (8), nine (9), or ten (10) non-overtime hours). (*See* 5 C.F.R. § 610.407.)

D. Overtime Work on a Federal Holiday.
1. Standard (40 Hour/five (5) Day Week) Work Schedules. Overtime work on a federal holiday is work in excess of eight (8) hours in a day or 40 hours in a week. This also applies to part-time employees.
2. Flexible Work Schedules. Overtime work on a federal holiday for employees under flexible work schedules is work in excess of eight (8) hours in a day or 40 hours in a week or 80 hours in a bi-weekly pay period that is officially ordered in advance and does not include credit hours. (*See* 5 U.S.C. § 6121(6).)
3. Compressed Work Schedules. Overtime work on a federal holiday for an employee under a compressed work schedule is hours of work in excess of the employee's compressed work schedule (*e.g.*, eight (8), nine (9), or ten (10) hour basic work requirement) on that day. (*See* 5 U.S.C. § 6121(7).)
4. Holiday hours, hours of paid leave, use of accrued compensatory time off or credit hours, and hours of excused absence with pay are credited as hours of work towards the overtime pay standards. For example, these hours are credited when determining whether an employee has worked in excess of eight (8) hours in a day or 40 hours in a week, or 80 hours in a bi-weekly pay period under a standard or alternative work schedule. (5 C.F.R. § 550.112(c) and 5 C.F.R. § 551.401(b).)
5. Employees are not excused from overtime work on a federal holiday because of the holiday.

E. Overtime Pay on a Federal Holiday.
1. Employees are entitled to overtime pay or compensatory time off, when applicable, if the Employer requires overtime work on a federal holiday (after the employees' scheduled tour of duty on a holiday).
2. Overtime work does not include credit hours worked voluntarily (earned) under a flexible work schedule, outside of holiday hours. (*See* 5 U.S.C. § 6121(6).)

Section 10
Training on a Holiday

A. An FLSA or non-FLSA employee is not entitled to holiday premium pay while engaged in training, with limited exceptions as provided in 5 C.F.R. § 410.402.

B. Compensation for time spent traveling to and from training.
1. Compensation provisions are contained in 5 C.F.R. § 550.112(g) for time spent traveling for employees subject to Title 5 of the United States Code.
2. Compensation provisions are contained in 5 C.F.R. § 551.422 for time spent traveling for employees covered by the FLSA.

Section 11
Travel on a Federal Holiday

Employees generally are not entitled to holiday premium pay for the time they spend in work-related travel during their work schedule on a federal holiday, unless it meets one (1) of the travel conditions specified in 5 U.S.C. § 5542(b)(2).

Section 12
Compensatory Time off for Travel

Compensatory time off for travel can 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 information on how to earn and use compensatory time for travel see CFTC Policy: Travel Management.

ARTICLE 11: TELEWORK

Section 1
Telework Program

A. Participation in the telework program is voluntary, and an employee may choose to discontinue a telework arrangement at any time.

B. Participants in the telework program will receive the same treatment/opportunities as non-teleworking employees in regards to work assignments, awards and recognition, development opportunities, and promotions.

C. The Employer will not be responsible for operating costs, home maintenance, insurance, travel, relocation, or any other costs (*e.g.*, utilities, internet service) associated with the use of an Alternative Worksite (as defined in Section 2.B of this Article.

Section 2
Definitions

For the purposes of this Article, the terms contained herein have been defined as follows:

A. Alternative Worksite: A location in the employee's home, designated by the employee as the location they will use to perform their official CFTC duties, and/or another location(s) agreed to by the employee and his or her supervisor.

B. Official Duty Station: An employee's Official Duty Station is the Official Duty Station as defined in 5 C.F.R. § 531.605.

C. Telework: Performance of official duties at an Alternative Worksite (*i.e.*, home or other location).

D. Teleworker: An employee (*i.e.*, permanent, part-time, temporary) who works at an Alternative Worksite (*i.e.*, home, telework center, or other location) on an occasional and/or recurring schedule with a Telework Agreement.

E. Telework Agreement: A written agreement completed and signed by an employee and appropriate official(s) in his or her mission area/agency/staff office that outlines the terms and conditions of the telework arrangement.

Section 3
Employee Eligibility

An employee is eligible for a telework arrangement if:

A. The employee is rated satisfactory as of her or his last appraisal;

B. The employee has sufficient portable work;

C. The employee's work does not require frequent access to confidential or sensitive data or information that is not attainable from home (*e.g.*, personnel and/or payroll records, non-public (CFTC restricted) information, or information protected from unauthorized disclosure by the Privacy Act of 1974 and its implementing regulations). However, the Employer will consider whether the security of data or information (including sensitive and Privacy Act material) can be adequately assured;

D. The employee has not been officially disciplined for being absent without permission for more than five (5) days (*i.e.*, at least 40 or more hours) in any one (1) calendar year and the record of the discipline remains in the Official Personnel Folder (OPF). For the purpose of Section 3.D of this Article, "officially disciplined" means any discipline that is placed in the employee's OPF;

E. The employee has not been officially disciplined for violations of Subpart G of the Standards of Ethical Conduct of Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a federal government computer or while performing official federal government duties; and

F. The employee has not received any disciplinary or adverse action in the preceding one (1) year and has no pending discipline or adverse action.

Section 4
Telework Arrangements

All eligible employees may request a telework arrangement. The following telework arrangements are available:

A. Episodic Telework. Approved telework performed when an employee's work assignments, or part of his or her work assignments, can be performed remotely for a portion of the day or week. Generally, episodic telework is expected to last from a few hours to less than one (1) calendar week. Although episodic telework is generally not recurring, and should occur infrequently, it may be scheduled on a limited basis for short periods of time. For example, an employee may have a special project that warrants the use of episodic telework on the same day or days for a number of consecutive or non-consecutive weeks. Prior approval by the immediate

supervisor is required for each episodic occurrence unless the employee and his or her supervisor agree otherwise.

B. Recurring Telework. A recurring telework arrangement under which an employee may telework for up to four (4) days per pay period, subject to the employee's work schedule that is selected and approved in accordance with Article 7 of this Agreement (Work Schedules and Credit Hours).

1. Employees who work a flexitour or gliding schedule are authorized to telework for up to four (4) days per pay period.
2. Employees who work a 5-4/9 or 4-10 compressed work schedule may be out of the office on either a regular day off or working at her or his telework site for no more than four (4) days per pay period.
3. Employees who are on a maxiflex schedule under which they work less than ten (10) but at least eight (8) days in a pay period may be out of the office on either a regular day off or working at her or his telework site for no more than four (4) days per pay period.
4. Excused absences (administrative time), leave (*e.g.*, annual, sick, or Family Medical Leave Act (FMLA)), or unscheduled telework (*e.g.*, due to inclement weather or emergency) are not considered days on which an employee is "out of the office" for purposes of Section 4.B of this Article.

A request for recurring telework must be submitted to the immediate supervisor and is subject to approval by the employee's Division Director or his or her designee. The Employer's approval of an employee's request for a regular, recurring telework arrangement will remain fixed unless and until it is changed by the employee or the Employer in accordance with this Article.

C. Reasonable Accommodation. Approved episodic or recurring telework to enable a disabled employee to perform the full range of his or her official duties. All requests for reasonable accommodations are subject to approval by the Employer's Disability Officer or his or her designee in the Human Resources Branch (HRB) and subject to the requirements of Article 26 of this Agreement (Reasonable Accommodation).

D. Temporary Medical.

1. Approved episodic or recurring telework performed for a period of time requested by the employee, submitted to the immediate supervisor, and approved by the employee's Division Director or his or her designee, which may be in excess of Section 4.B of this Article, due to a documented medical condition of the employee, or the employee's immediate family member, that temporarily prevents the employee from performing his or her duties in the traditional office. For the purposes of this Article, an immediate family member is defined consistent with 5 C.F.R. § 630.201 as the spouse and parents thereof, parent, children and brothers/sisters and spouses thereof, or any individual related by blood or affinity who has an equivalent family relationship.

2. To be approved, the employee must submit documentation of:
   (a) The date the health condition commenced;
   (b) A general statement of the medical condition;
   (c) The probable duration (*i.e.*, the date on which the employee will be able to return to work in the office); and,
   (d) If applicable, whether there is any limit on the employee's performance of work during the temporary telework arrangement (*e.g.*, type of work, number of hours per day).
3. The Employer may request additional documentation or clarification.
4. Requests for temporary medical telework will be approved in increments of 90 calendar days or less.
5. Requests based on the medical condition of an employee that exceed 90 calendar days must be requested as a reasonable accommodation under Section 4.C of this Article. Employees who do not qualify for reasonable accommodation may be granted a limited extension of up to one (1) calendar year, in increments of 90 days or less. Requests based on the medical condition of an employee's immediate family member that exceed 90 calendar days must be requested as a temporary hardship under Section 4.E of this Article.
6. At the conclusion of the telework arrangement, or when an extension is denied, the employee must return to the Official Duty Station as directed by the Employer.
7. The Employer will decide whether the employee meets the medical requirements and whether to approve the telework request.
8. Decisions regarding telework based on a medical condition are made on a case-by-case basis and are based on work constraints, office coverage, impact on co-workers, and employees' medical requirements or personal needs. The decision will be upheld if based on a rational basis.

E. Telework for Temporary Hardships.

1. Where an employee is experiencing a qualifying hardship, an eligible employee may request a temporary telework arrangement which may be in excess of 4.B of this Article.
2. Eligibility: An employee is eligible to request a telework arrangement under this Section 4.E of this Article if:
   (a) The employee meets the eligibility requirements in Section 3 of this Article;
   (b) The employee has not been placed on leave restriction for one (1) calendar year; and
   (c) The employee has served a minimum of two (2) years of service with CFTC and is not serving on a probationary or trial period.
3. A qualifying hardship cannot pre-date employment with CFTC. Employees can apply for hardship telework on the following basis:
   (a) Involuntary reassignment of a spouse. Where the request is based on the reassignment of a spouse, the employee can sign a self-certification stating that the assignment is involuntary, and providing the current and future duty location.

(b) Temporary medical condition of an immediate family member that exceeds 90 calendar days in duration. The required medical documentation must be provided in accordance with Sections 4.D.2 and 4.D.3 of this Article.

4. A request for temporary hardship telework must be submitted to and approved by the Executive Director in consultation with the Chief Human Capital Officer and Telework Managing Officer and supervisory staff as appropriate, or their respective designees.
5. Where a request for telework based on a temporary medical condition is covered by Sections 4.C or 4.D of this Article, it will not be considered under this Section 4.E of this Article.
6. The Employer will consider and retains the discretion to approve temporary hardship requests in increments of 90 calendar days, depending on the specific circumstances of the hardship, subject to staffing and workload needs. Employees may seek to extend the temporary hardship to a cumulative total of up to one (1) calendar year (365 calendar days) where the hardship still exists and approval is consistent with the business needs of the Employer. Once the allowance is exhausted, the employee will not be eligible to be considered for hardship telework for three (3) calendar years.
7. When a request for a temporary hardship telework arrangement is denied, the Employer will provide the employee with the reason(s) for the denial in writing. The denial will be upheld if supported on a rational basis based on staffing or workload needs. At that time, the Employer will provide the employee with the reason(s) for the suspension or termination in writing.
8. At the conclusion of the telework arrangement, or when an extension is denied, the employee must return to the Official Duty Station as directed by the Employer.

F. Continuity of operations plan (COOP). Episodic or recurring telework performed to ensure that the Employer can continue to perform mission-essential functions during an emergency, including localized acts of nature, accidents, and technological or attack-related emergencies. During the time period that the COOP has been activated in response to a specific emergency, the COOP supersedes the provisions of this Article.

G. Telework in lieu of approved annual leave. Employees who have an approved telework arrangement may request to telework at a location other than their primary telework site in lieu of approved annual leave, so long as approval to do so is granted in advance. The Alternate Worksite must meet the terms and conditions of the employee's Telework Agreement, and the employee must complete the safety certification checklist. However, upon converting annual leave to telework, employees are subject to the frequency limitations specified in Sections 4.A and 4.B of this Article, unless ordered to perform work by the Employer.

Section 5
Location of the Telework Site

A. Employee telework sites must be located within the United States. The Employer will not pay any additional costs borne by the employee where the employee is required to physically report to their office.

B. An employee may be approved to work from more than one (1) telework site contingent upon meeting the requirements in Section 9 of this Article.

Section 6
Requests for Telework and the Telework Agreement

A. To request a telework arrangement, the employee must submit a signed Telework Request and Agreement Form to his or her supervisor. The Employer will respond to a properly submitted request for a recurring or episodic telework arrangement within 14 calendar days. Denial of a recurring or episodic telework arrangement will, upon request, be provided to the employee in writing, specifying the reason(s) for denial.

B. The Telework Agreement documents the terms and conditions of participation in the telework program. The Telework Agreement must be signed by both parties prior to the start of teleworking. If employees have an approved agreement for recurring telework, they may also work episodic telework with advance supervisory approval.

C. To discontinue participation in the telework program, the employee must notify his or her supervisor in writing. Because participation in the telework program is voluntary, an employee may do so at any time; however, the change to non-telework status will take effect within one (1) pay period

D. An employee may submit a written request to change his or her recurring telework schedule at any time by submitting a revised Telework Agreement. The Employer will respond to the request within 14 calendar days. In the event of denial, upon request, the Employer will provide the employee with the reason(s) for the denial in writing.

E. Within a particular pay period, an employee may request to change his or her scheduled telework day(s) to other day(s) in the work week. Such requests will not be unreasonably denied. Where an employee takes a day of leave or portion thereof using credit hours, the employee will be required to forfeit a telework day or days, or portion thereof, to the extent that the employee would otherwise not comply with the minimum number of days in the office requirement found in Article 7 of this Agreement (Work Schedules and Credit Hours).

Section 7
Training

A. Any employee considering participation in the telework program is required to complete telework training prior to submitting a Telework Request and Agreement Form and an Alternative Worksite Safety Checklist. The telework training can be found via the Employer's online training system.

B. Employees who have a Telework Agreement as of the effective date of this Agreement will not be required to undergo or repeat telework training, absent a requirement that all teleworkers must do so by the head of the Employer.

Section 8
Denial, Suspension or Termination of Telework Arrangement

A. The Employer may deny an employee request for a telework arrangement if the employee:

1. No longer meets the eligibility criteria in Section 3 of this Article;
2. Is placed on a performance improvement plan; or
3. Has documented time or attendance issues previously communicated to the employee in writing during the prior six (6) months.

B. The Employer may temporarily suspend or terminate an employee's telework arrangement if the Employer finds that the employee:

1. No longer meets the eligibility criteria in Section 3 of this Article;
2. Failed to adhere to the provisions of his or her Telework Agreement;
3. Has been the subject of a final disciplinary action imposed by the Employer which, based on the Telework Enhancement Act, disqualifies the employee from continued participation;
4. Performance has declined (*e.g.*, where the employee fails to meet established deadlines or fails to progress satisfactorily on assignments, but not insignificant fluctuations or declines in performance), and the decline in performance may be reasonably attributed to her or his participation in telework;
5. Is placed on a performance improvement plan; or
6. Fails to truthfully report time worked.

C. Under Section 8.B of this Article, the Employer will give advance notice of a temporary suspension or termination of a Telework Agreement. At that time, the Employer will provide the employee with the reason(s) for the suspension or termination in writing. The employee will have an opportunity to meet with the Employer to discuss the reason(s) for suspension or termination. To the extent possible, the Employer will provide the employee with this opportunity to be heard prior to implementing a final action. An employee who has his or her

telework arrangement terminated may reapply for a telework arrangement six (6) months from the date of suspension or termination.

Section 9
Alternative Worksite Safety

A. An employee will complete the required Safety Checklist and ensure that the Alternative Worksite is safe and has adequate workspace, lighting, ventilation, temperature controls, telephone service, power, smoke alarms, and security.

B. A teleworker is covered by the applicable provisions of the Federal Employee's Compensation Act if injured while performing official duties at his or her approved Alternative Worksite. An employee will notify his or her supervisor immediately of any such accident or injury and will complete any required forms. Following reasonable advance notice, the Employer may inspect the employee's approved telework site where such an injury has been reported.

Section 10
Performance of Work

A. Performance requirements for teleworking employees are the same as those for non-teleworking employees. Nothing in this Article shall affect the Employer's right to assign work or make reasonable requests to ascertain the status of work assignment(s) in accordance with applicable laws, rules, regulations, the Employer's needs, or operational goals.

B. A teleworking employee will be available at an Alternative Worksite to supervisors, coworkers, and the public by telephone, voicemail, and email to the same extent as if he or she was in the Official Duty Station.

C. Telework must normally be performed using a CFTC-issued laptop. A loaner laptop will be made available to any employee who has not been issued a CFTC laptop. However, when an employee who requests same-day episodic or unscheduled telework due to an unplanned event (including inclement weather) does not have their CFTC laptop, but has portable work that can be performed and access to a CFTC issued phone for the purpose of accessing email, the employee's supervisor may authorize the employee to telework. The employee must account for the full day using a combination of telework and/or approved leave.

D. Only official duties and Union representational duties will be performed during official duty hours at the approved Alternate Worksite.

E. Telework is not intended to be a substitute for leave when an employee is incapacitated or otherwise unable to perform the duties of their position.

Section 11
No Dependent Care

A. Teleworking is not a substitute for childcare or dependent care. It is permissible for a caregiver to be present at the Alternative Worksite to take care of a dependent while the teleworker is officially working.

B. If a situation arises where the teleworker must attend to a dependent at the Alternative Worksite during scheduled duty hours, the teleworker shall notify the supervisor and arrange to take leave, credit hour(s), or make other arrangements.

Section 12
Time and Attendance

Time spent working in a telework status must be recorded through the Employer's electronic time management system. Normal procedures regarding requests and approval of leave, compensatory time, overtime, and credit hours applies when an employee is teleworking.

Section 13
Work Schedules

A. A teleworking employee's work schedule may include any alternative work schedules allowed for by Article 7 of this Agreement (Work Schedules).

B. Employees may earn credit hours when teleworking, including weekends, subject to Article 7 of this Agreement (Work Schedules).

C. An approved teleworker may telework less than their regular scheduled tour of duty with prior supervisory approval. This may occur when an employee works a portion of the work day in the office or is taking approved leave for a portion of his or her work day and requests to telework the remaining hours in the work day. Where the employee works at their telework location for part of their scheduled duty day, except where he or she would only earn credit hours, the day counts as a day out of the office for purposes of employees meeting their required three (3) days of physically being in the office.

D. The Employer reserves the right to direct an employee scheduled for telework to report to his or her Official Duty Station in circumstances deemed necessary by the Employer to meet mission, staffing, and/or workload requirements such as meetings, receiving work assignments, training, travel, absences of other employees, emergency situations, or other situations deemed necessary by the Employer to meet mission, staffing, and/or workload requirements. If the Employer determines that the employee cannot fulfill the work requirement while teleworking, the Employer will give the employee 24 hours' notice of the need to report to the Official Duty Station; however, where the need for the employee to report to the Official Duty Station is

unforeseen, management will provide as much notice as possible. Where the employee cannot report to the office for personal reasons, they may request leave. Where the employee is directed to report to the Official Duty Station during her or his tour of duty, the employee can normally reschedule their telework day. Reasonable commuting travel time will be considered duty time.

E. When the Employer directs the employee to report to his or her Official Duty Station (or to a temporary duty location, if applicable) on the employee's scheduled telecommuting day in a given pay period, the Employer will grant an employee's request to work a different telecommuting day during that same pay period unless mission, staffing, and/or workload requirements require the employee's presence. In the event of denial, the Employer will provide the reasons for denial in writing.

F. If an emergency occurs at the telework employee's Alternative Worksite that impacts on his or her ability to perform official duties, then the employee will immediately notify the Employer. In such an emergency, the Employer may direct the employee to report to the Official Duty Station or approve annual leave, credit hours, administrative leave, or leave without pay.

Section 14
Technology and Equipment

A. Teleworking employees, where directed by the Employer, must use an Employer-issued laptop computer to perform work at the approved Alternative Worksite.

B. An employee who is scheduled to telework, but who forgets to bring their laptop to the approved Alternate Worksite, may request approved leave to retrieve the laptop or to account for the full workday.

C. The Employer will facilitate and assist teleworking employees in the event of software, connectivity, and /or other access issues.

D. Teleworking employees must ensure that government-provided property is used only for approved purposes. The Employer will service any government equipment provided to an employee at the Official Duty Station.

E. An employee must comply with all relevant information technology security measures, including password protection and data encryption, so that Privacy Act and other security standards are not compromised.

F. Teleworking employees may utilize necessary and routine office supplies (such as pens, paper, and similar) and, where there is need, a telephone card for making business related long-distance telephone calls while at the Alternative Worksite.

G. The Employer will reimburse a teleworker for appropriate and authorized expenses incurred while conducting official duties at the approved Alternative Worksite as provided for by law and regulations. The Employer will not be responsible for operating costs, home maintenance, insurance, or any other costs (*e.g.*, utilities, internet service) associated with the use of an Alternative Worksite.

Section 15
CFTC Closure, Late Opening and Early Dismissal

A. Employees who have a Telework Agreement will telework on a day that the employee's Official Duty Station is closed and will not normally be granted administrative leave. However, if a condition exists at or impacts the Alternative Worksite (*e.g.*, power outage or equipment failure, but not including dependent care) that prevents the employee from performing work using the CFTC-issued laptop, the specific circumstances will dictate whether the employee may be authorized to take accrued leave or be granted administrative leave.

B. On a day that there is a closure of the CFTC, an employee who teleworks must account for a full work day through a combination of telework and accrued leave or other leave as appropriate.

C. When the CFTC closes due to a weather or safety condition that could reasonably be anticipated, and an employee who has a Telework Agreement forgets or neglects to bring their CFTC laptop home, the employee may request approved leave to account for the full work day. Administrative leave will not be granted under these circumstances. However, when, in the Employer's judgement, the employee took reasonable steps (within the employee's control) to prepare for teleworking and was unable to bring their CFTC laptop home, the Employer may grant administrative leave. The Employer will not unreasonably deny such requests.

D. Employees may not receive administrative leave for hours during which employees are on other preapproved leave (paid or unpaid) or paid time off.

E. A supervisor will approve an employee's request for episodic telework for a full day or partial day in the event the government is open with the option of unscheduled leave/unscheduled telework or in the case of early departure. In such circumstances, the teleworking employee must account for a full work day through a combination of telework and accrued leave or other leave as appropriate.

F. Late Opening. Employees who are scheduled or request to telework are not impacted by commuting issues and must account for their full work day through a combination of telework and other leave as appropriate.

G. When the CFTC announces an early dismissal of employees for non-emergency conditions, such as on the day prior to a federal holiday, employees who telework will also be excused.

ARTICLE 12: TRAVEL

Section 1
General

A. The Parties will adhere to applicable laws, rules, and regulations as outlined in the Federal Travel Regulations (FTR). Those specific requirements (in the FTR) are not addressed in this Article.

B. The Parties agree to adhere to CFTC Policy: Travel Management where it is not in conflict with this Article or the FTR.

C. The Employer will evaluate employees' travel-related requests based on staffing, workload, mission accomplishment, and budgetary considerations. In cases where the Employer denies an employee's travel-related request, the responsible official shall advise the employee of his or her reasons for such denial. Upon the request of the employee, the Employer shall furnish a written statement of the reasons for the denial.

Section 2
Hours of Duty

A. To the extent practicable and in accordance with this Article and the FTR, the Employer will not direct an employee to remain overnight at a temporary duty station (TDY) and to travel the next day if the next day is not a workday. Employees who wish to combine personal and official travel must follow the procedures outlined in CFTC Policy: Travel Management. Employees who are authorized to travel on a day or at a time other than that selected by the Employer receive the lesser of the estimated time in a travel status had the employee traveled at the time selected by the Employer or the employee's actual time in a travel status.

B. Pursuant to 5 U.S.C. § 6101(b)(2), the Employer shall reasonably attempt to schedule the time to be spent by an employee in travel status away from his or her Official Duty Station within the regularly scheduled workweek of the employee. Pursuant to 5 C.F.R. § 610.123, when it is essential that an employee be required to travel on non-duty time and the employee is not eligible for overtime pay, the responsible official shall record his or her reasons for ordering travel at those hours and shall, upon request, furnish a copy of this statement to the employee.

C. For employees who are exempt under the FLSA, and in accordance with 5 C.F.R. § 550.112(g) and OPM policy guidance "Hours of Work for Travel," time spent in travel status away from an employee's Official Duty Station is not hours of work/duty unless:

1. The time spent is within his or her regularly scheduled administrative workweek, including regularly scheduled overtime work; or

2. The travel:
   (a) Involves the performance of actual work while traveling;
   (b) Is incident to travel that involves the performance of work while traveling;
   (c) Is carried out under such arduous and unusual conditions that the travel is inseparable from work; or
   (d) Results from an event that could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of the employee to his or her Official Duty Station.

D. With respect to FLSA covered (non-exempt) employees, and in accordance with 5 C.F.R § 551.422(a), time spent in travel status away from an employee's Official Duty Station shall be considered hours of duty if:

1. An employee is required to travel during regular working hours;
2. An employee is required to drive a vehicle for the actual performance of his or her work (except as provided in 5 C.F.R. § 551.422(b)) or perform other work while traveling;
3. An employee is required to travel as a passenger on a one (1) day assignment away from the Official Duty Station; or
4. An employee is required to travel as a passenger on an overnight assignment away from the Official Duty Station during hours on non-workdays that correspond to the employee's regular working hours.

Section 3
Telephone Calls

An employee who has been issued a CFTC telephone may make one (1) personal call of up to ten (10) minutes per day. An individual who has not been issued a CFTC telephone may make a personal call of up to $10.00 per day.

Section 4
Premium Class Travel

Employees with a special need for premium class air travel will be accommodated in accordance with CFTC Policy: Travel Management.

Section 5
Rotational Work Assignments

When consistent with staffing, workload, mission accomplishment, and budgetary considerations, a supervisor may rotate work assignments requiring travel to reduce burdens on affected employees.

Section 6
Compensatory Time Off for Travel

A. Compensatory time off for travel is 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. Travel outside scheduled hours of work between an employee's home and a transportation terminal is considered creditable travel time only when the transportation terminal is outside the limits of the employee's official station and only to the extent that such travel time exceeds the normal commuting time.

B. In accordance with 5 C.F.R. § 550.1404(b), time in travel status includes the time an employee actually spends traveling between his or her Official Duty Station and one (1) TDY or between two (2) TDYs, and the usual waiting time that precedes and/or interrupts such travel. An extended (*i.e.*, not usual) waiting period between actual periods of travel during which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes, is not considered time in travel status.

C. Eligible compensatory time off for travel will be credited and used in increments of 15 minutes. In order to use compensatory time for travel earned, an employee must submit a written request through the Employer's electronic time management system. This request must be approved in advance and in writing by the employee's supervisor. The Employer will approve an employee's written request to use compensatory time for travel already earned unless the employee's absence will have an adverse effect on staffing, workload, and/or mission requirements. If an employee's request is denied, the Employer and the employee will attempt to agree upon an alternative time for the employee to use the earned time.

D. Employees must use accrued compensatory time off for travel by the end of the 26th pay period after the pay period during which it was earned. Unused compensatory time off for travel will be held in abeyance for an employee who separates or is placed in a leave without pay status and later returns following: separation or leave without pay to perform service in the uniformed services and a return to service through the exercise of a reemployment right; or separation or leave without pay due to an on-the-job injury with entitlement to injury compensation under 5 U.S.C. Chapter 81. The employee must use all of the compensatory time off held in abeyance by the end of the 26th pay period following the pay period in which the employee returns to duty or such compensatory time off will be forfeited. The Employer will notify the employee that his or her accrued compensatory time off for travel may be forfeited at least two (2) pay periods prior to forfeiture.

E. As provided in 5 C.F.R. § 550.1408, an employee may not receive payment under any circumstances for any unused compensatory time off he or she earned under this Article.

F. Time spent travelling in connection with Union activities cannot be used to accrue compensatory time off.

Section 7
Combined Personal and Official Travel

The Employer may authorize up to three (3) calendar days (and the Executive Director may approve additional days) of personal travel in combination with an employee's official business travel provided there is no additional cost to the Employer.

Section 8
Passport Management

A. As part of the CFTC-wide effort to improve and increase internal controls, all valid official passports issued to CFTC staff will be retained by the Travel Service Office (TSO) or the Regional Administrator's Office when the employee is not on official foreign travel. .

B. Whenever a CFTC employee has an approved and ticketed authorization for foreign travel, the TSO or Regional Administrator will release the official passport to the traveler, usually no more than five (5) days before departure. Travelers must sign for the passport on the Passport Control Log Sheet, which will also be updated when the passport is returned to the custody of the TSO or Regional Administrator. All travelers are required to return their Official Passport to the TSO or Regional Administrator within five (5) days of their return from international travel.

Section 9
Receipts

The Employer will remain in compliance with the FTR and CFTC Policy: Travel Management as it relates to receipt requirements. If suspicious activity is suspected, the Employer retains the right to request additional information or supporting documentation for any expenses that have been claimed.

ARTICLE 13: PERFORMANCE APPRAISAL SYSTEM

Section 1
Critical Job Elements and Performance Standards

A. This Article is intended to be interpreted and applied in a manner consistent with 5 U.S.C. Chapter 43, and 5 C.F.R. Part 430.

B. As required by 5 U.S.C. § 4302(c)(1), the Employer has determined it will:

1. Establish performance standards which will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the positions in question;
2. Ensure that, to the maximum extent feasible, performance standards will be specific, observable, and measurable; and
3. Ensure that performance standards, through their description of any goal in terms of quality, efficiency, or timeliness, will provide a clear means of assessing whether objectives have been met.

C. The Employer will not impose forced distribution of levels of ratings for employees covered by this Agreement. The Employer will not use absolute performance standards for critical job elements unless authorized by law.

D. The Employer will write performance standards for critical job elements at the unsatisfactory or satisfactory level. Consistent with the law, the Union will be afforded the opportunity to bargain over the impact and implementation of any changes to or new critical job elements and standards before they become effective.

Section 2
Performance Plan

A. The Employer will establish a performance evaluation plan (Plan) for each employee. The Plan will consist of critical elements that are aspects of the employee's work where acceptable performance is essential to his or her position. Each element will have a performance standard that, at a minimum, states the expectations or requirements established by the Employer that must be met by the employee in order for his or her performance to be rated as satisfactory in that element. An employee's performance will be rated in each element of the Plan. Consistent with Article 42 of this Agreement (Actions for Unacceptable Performance), if an employee's performance is unsatisfactory in any one critical element, the overall rating will be unsatisfactory.

B. Elements and standards must be reasonably related to the duties set forth in the employee's position description. Written performance appraisals will be based on a comparison of the employee's performance on his or her work throughout the entire rating period or

applicable portion thereof to the elements and standards of his or her Plan. An employee will be rated on actual performance.

C. An employee should discuss in a timely manner with his or her supervisor the factors the employee believes have affected his or her performance, such as the use of approved official time for representational functions, the authorized performance of collateral duties, lack of customary or necessary training, or unavailability of required resources. The Employer will take into account any mitigating impact of such factors when evaluating the employee's performance.

D. Prior to making changes to a Plan, the Union will be provided at least 15 calendar days to comment on the proposed Plan before it is finalized by the Employer. NTEU also retains the right to negotiate over changes to Plan(s) as required by law. An employee will not be held accountable or responsible for any changes to the elements and standards under his or her Plan until they are received by the employee.

Section 3
Delivery of the Plan

A. The Plan normally will be delivered to employees within 30 days of their appointment or within 30 days or their reassignment or promotion to a new position. For employees who are new to the CFTC, a copy of CFTC Form 442 must be provided to and discussed with the employee by the rating official during this time period.

B. In meetings to discuss the Plan, the rating official will discuss the critical job elements (CJEs) and standards, as well as expectations for the satisfactory performance with the employee she or he supervises.

C. Once the discussion has occurred, the rating official and the employee will sign and date the Plan. The employee's signature acknowledges receipt and discussion of the Plan, and that the employee will be rated based upon the Plan. In no event will an employee be held accountable or responsible for CJEs and standards until the employee receives and discusses the Plan containing those CJEs and standards.

Section 4
Progress Review

A. The process of monitoring employees' performance is ongoing. Therefore, the Employer will counsel employees in relation to their overall performance rating on a continuing basis. Counseling may include additional coaching, monitoring, mentoring, and other developmental activities, as appropriate, to assist the employee in improving her or his performance in that (or those) specific CJE score(s).

B. An employee will receive one (1) mid-year progress review during the appraisal period, during which the Employer will provide oral or written feedback on the employee's performance of the critical elements of the Plan. Absent a significant business reason, the Employer will provide this progress review within 30 calendar days of the mid-point of the employee's appraisal period. The Employer will not give the employee a rating of record (the written performance appraisal) at this time.

C. If the Employer identifies unsatisfactory performance during the rating period, the Employer will provide specific examples of the deficient performance to the employee and guidance and advice on what the employee must do to improve her or his performance to a satisfactory level. Where unsatisfactory performance is identified and supported by substantial evidence, the Employer will place the employee on a performance improvement plan in accordance with Article 42 of this Agreement (Actions for Unacceptable Performance).

Section 5
Written Performance Appraisal

A. The appraisal period will transition to a fiscal year cycle (October 1 through September 30 of the following year) in accordance with the Performance Management and Pay Reform Agreement signed by the Parties on March 6, 2019, unless adjusted due to individual circumstances.

B. Normally, within 30 calendar days after the end of the appraisal period, each employee will receive a written performance appraisal from her or his immediate supervisor (rating official) that will be based on her or his performance compared to the standard for each element.

C. At a minimum, the written performance appraisal will indicate whether the employee's performance was satisfactory or unsatisfactory in each element. The appraisal also will include a brief narrative summary of the employee's achievements and areas for improvement and/or growth in the coming rating period.

D. An employee may receive a written performance appraisal up to 90 calendar days before the conclusion of the appraisal period if:

1. The employee changes positions or separates from the Employer within 90 calendar days before the end of the appraisal period; or
2. The rating official departs within 90 calendar days before the end of the appraisal period.

E. If an employee changes positions or is assigned to a new supervisor at any time during the appraisal period, other than within 90 calendar days before the end of the appraisal period, the Employer should include in the written performance appraisal at the end of the rating period information about the employee's performance provided by the previous supervisor.

F. An employee must be under her or his current Plan for at least 90 calendar days before receiving a written performance appraisal.

G. The use of approved official time for Union representational functions will not be considered as a negative factor when evaluating an employee against her or his performance standards. An employee performing Union representational functions on approved official time will be provided an annual evaluation/performance rating if he or she has spent 750 hours or more on non-union duties assigned by a CFTC supervisor during the appraisal period.

H. The Employer and employee will sign and date the written performance appraisal. The employee's signature constitutes an acknowledgement of receipt and discussion of the appraisal and does not necessarily signify the employee's agreement. An employee may attach a written response to her or his written performance appraisal.

Section 6
New and Revised Elements and Standards

A. The Union will be provided with copies of CJEs and standards that are new or revised. If a more than *de minimis* change occurs to the CJEs or standards, or to the performance expectations needed to meet a particular standard, the Union will be afforded an opportunity to bargain impact and implementation before the CJEs, standards, or performance expectations are put into effect. A request to negotiate must be submitted within 15 calendar days of receipt of the new or revised standards or performance expectations. Subsequent to implementation, employees will be responsible for the CJEs and standards when received.

B. If deletions are made for any reason in CJEs, performance standards, or the aspects that make up the CJEs, the Union will be notified as well as the affected employee(s).

ARTICLE 14: EMPLOYEE RECOGNITION AND INCENTIVE AWARDS PROGRAM

Section 1
General

Consistent with law, rule, regulation, and CFTC policy dated August 10, 2010, the Employer may, in its discretion, recognize employee contributions with monetary and non-monetary awards. The Employer will administer the policy in a fair and equitable manner in making these awards.

Section 2
Grievances

An employee may grieve the Employer's decision regarding awards covered by this Article in accordance with Article 38 of this Agreement (Grievance Procedures).

Section 3
Reporting

Consistent with law, not later than 30 days after the end of each fiscal year, the Employer will report to the Union the total amount of monetary awards paid to all employees. This report will contain the date of each award, the type and amount of each award, and the recipient's position, grade, and office.

ARTICLE 15: POSITION CLASSIFICATION

Section 1
Position Descriptions

A. The Employer will inform the Union as soon as possible when significant changes will be made in the duties and responsibilities of positions held by employees in the bargaining unit due to reorganization or when changes in position classification standards result in classification changes.

B. Each position description will accurately reflect the important, regular, and recurring duties and responsibilities assigned to the position and the level of supervisory oversight (Supervisory Controls) for the position.

C. Whenever a position description is amended, the Employer will give the Union notice and an opportunity to bargain to the extent required by law. The phrase “other duties as assigned” in a position description will not be used regularly to assign work where the work is not reasonably related to the employee’s position description.

Section 2
Classification Appeals

A. Employees will inform their managers in a reasonably timely manner if they believe position descriptions do not reflect the major duties and responsibilities of the position or if they dispute the grade level of their work. The employee and manager will discuss the position description.

B. An employee may appeal the classification of her or his position to the Employer.

ARTICLE 16: PROBATIONARY/TRIAL PERIOD EMPLOYMENT

Section 1
Probationary/Trial Period

A. Employees in the competitive service will serve a probationary period of 12 months. Employees in the excepted service will serve a trial period of 24 months. During the probationary/trial period, the employee's conduct and performance in fulfilling the duties of his or her position will be observed. The Employer will provide timely guidance with respect to any performance problems that arise consistent with Article 13 of this Agreement (Performance Appraisal System).

Section 2
Separation

A. In accordance with applicable law and regulation, if the Employer concludes that the probationary/trial period employee will be separated during the probationary period, the Employer will provide to the employee a written termination letter. The termination letter will contain the Employer's conclusions as to the inadequacies of the employee's performance or conduct. The Employer will comply with applicable law and regulations in separating the employee before he or she has completed the probationary/trial period.

B. All notices to separate a probationary/trial period employee will contain a statement concerning the employee's right to appeal, in accordance with law and regulation, to the Merit Systems Protection Board, Equal Employment Opportunity Commission (EEOC), or the U.S. Office of Special Counsel.

ARTICLE 17: CAREER LADDER PROMOTIONS

Section 1
General

A. A career ladder is a series of positions of increasing difficulty in the same line of work within a single occupational series through which an employee may progress from the entry level to the full performance level. The full performance level is the highest grade level to which an employee may be promoted non-competitively within a career ladder. While promotions within career ladders are neither automatic nor mandatory, career advancement is the intent and expectation in the career ladder system.

B. An employee is eligible for a career ladder promotion when all of the following conditions have been met and in accordance with applicable law, rule, and regulation, including 5 C.F.R. § 335.104:

1. The employee encumbers a career ladder position;
2. The employee has demonstrated the ability to perform the higher grade level duties;
3. The employee has completed a minimum of 52 weeks in the current grade;
4. There is sufficient work at the higher grade level position;
5. The employee's current rating of record is satisfactory or a similar level of performance under any negotiated successor performance system; in addition, no employee may receive a career ladder promotion who has a rating of record below satisfactory on a critical element that is also critical to performance at the next higher grade of the career ladder; and
6. Sufficient funds are available.

C. The Employer will notify NTEU when career ladder promotions are delayed due to lack of funds no later than 45 days after the date the first affected employee becomes eligible for the career ladder promotion. Every 30 days thereafter, the Employer will provide the Chapter President with cumulative lists of affected employees including employees' names, grades, departments, and date of eligibility for the career ladder position.

D. The Employer normally will complete its review of an employee's eligibility for a career ladder promotion no later than 20 calendar days after the employee has completed one (1) year in his or her current grade. Following its review, the Employer will determine whether to approve or deny the promotion within ten (10) calendar days.

1. If the decision is delayed beyond ten (10) calendar days after the review and it is determined that the employee meets the conditions in Section 1.B of this Article, the promotion will be effective on the earliest date permitted by law, rule, and regulation.
2. If the Employer determines that the requirements in Section 1.B of this Article have not been met, an employee not promoted will be notified in writing of the reason(s) for the decision.

E. At the employee's request, and no earlier than six (6) months after the denial of the career ladder promotion, the Employer will conduct another review of whether an eligible employee meets the requirements. The determination to will be effected in accordance with Section 1.B of this Article.

F. At the request of the employee, the Employer will conduct subsequent reviews at six (6) month intervals and promote or notify the employee consistent with Sections 1.B and 1.D of this Article.

ARTICLE 18: MERIT PROMOTION PROCEDURES

Section 1
Equal Employment Opportunity

A. Actions taken under this Article shall be made without regard to race, color, religion, sex (including pregnancy and gender identity), national origin, political affiliation, sexual orientation, marital status, disability, genetic information, age, membership in an employee organization, retaliation, parental status, military service, or other non-merit factor.

B. Nothing in this Article shall be construed to limit the Employer's right, in accordance with law, to select or not select from any properly ranked certificate (as described in Section 6 of this Article) or any other appropriate source. The Employer may choose the method of filling a vacant position so long as merit system principles and the terms of this Agreement are followed.

Section 2
Merit Promotion Procedures Covered by this Article

A. Consistent with 5 C.F.R. Part 335, the provisions of this Section 2 of this Article apply to all placement actions within the bargaining unit except those excluded by Section 2.B of this Article. Examples of such covered actions are:

1. Filling a position by promotion;
2. Filling a position by temporary promotion for more than 120 days;
3. Details for more than 120 days to a higher graded position or to a position with higher promotion potential;
4. Selection for training that is covered by 5 C.F.R. § 335.103(c)(iii);
5. Filling a position by reassignment or demotion with more promotion potential than any position previously held on a permanent basis by the applicant in the competitive service;
6. Filling a position by transfer or reinstatement at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service; or
7. Filling a position by permanent or temporary conversion for more than 120 days, from one (1) work schedule to another (*e.g.*, career/career-conditional intermittent employee to a seasonal tour of duty).

B. The placement actions listed below within the bargaining unit are not covered by the competitive procedures of this Article:

1. Career ladder promotions to the full performance level;
2. Reassignments or changes to a lower grade, except as set forth in Section 2.A of this Article;

3. Promotion resulting from the upgrading of a position without significant change in the duties and responsibilities due to the issuance of a new classification standard or the correction of an initial classification error;
4. A position change permitted by reduction-in-force regulations;
5. Filling a position by temporary promotion or details to a higher graded position for 120 days or less;
6. Re-promotion to grades or positions from which an employee was demoted within the CFTC (or another merit system with which OPM has an interchange agreement) for other than performance or conduct reasons;
7. Government-wide programs (*e.g.*, programs to employ people with disabilities, Veteran's Recruitment Appointment Program, Pathways Programs, etc.) up to and including conversion into the competitive service;
8. Any other mandatory exceptions provided for by law, government-wide regulation, or Executive Order;
9. Filling positions by reinstatement or transfer, except as set forth in Section 2.A of this Article;
10. Returning an employee to a full-time tour of duty who has previously received a change to a part-time tour of duty; and
11. Promotion as a result of a negotiated settlement of a complaint to the extent consistent with law.

Section 3
Consideration of Bargaining Unit Employees

A. The Parties agree that the Employer has the right, at its discretion, to fill vacant positions by recruiting eligible candidates through the announcement of such vacancies within the CFTC and by concurrently recruiting from any other appropriate source by any appropriate means (*e.g.*, OPM competitive examining referrals, reassignments, reinstatements, and advertisements). When a position is posted to be open to applicants from outside the bargaining unit, bargaining unit employees will be given the opportunity to apply for the vacant position and will be given simultaneous consideration with outside applicants.

B. Eligible bargaining unit employees seeking reassignment to a vacant posted position also may be considered for the vacancy pursuant to Article 20 of this Agreement (Reassignments).

Section 4
Area of Consideration

The area of consideration is the area in which an active search of candidates is made. The minimum area of consideration is that area in which it can be reasonably expected that a sufficient number of qualified employees will be located. The area of consideration should be sufficiently broad to attract high quality candidates, taking into account the nature and level of the position being filled. The minimum area of consideration will be CFTC-wide.

Section 5
Vacancy Announcements

A. Announcements for bargaining unit positions will be advertised on the USAJobs website. CFTC vacancy announcements shall follow a standard format. Each vacancy announcement will include the information required in 5 C.F.R. § 330.104. The CFTC shall send a weekly CFTC-wide email, titled "Weekly Job Vacancies Announcement," providing a link to open vacancy announcements and a link to USAJOBS guidance on how to sign up for email notifications. Vacancy announcements under this Article will remain open for a minimum period of five (5) business days.

B. Amended announcements will indicate that they have been modified.

Section 6
Qualifications Review and Ranking of Applicants

A. Applicants meeting the minimum qualifications will be rated and ranked in accordance with this Section 6 of this Article. All applicants who do not meet the minimum qualifications for the position will be notified in writing within five (5) to seven (7) business days from the date the certificate of referral is issued.

B. Applicants meeting the minimum qualifications will be evaluated against the ranking criteria established for the position. The competencies will be described in terms of observable, objective, and measurable criteria to the extent possible.

C. When ranking candidates for vacancies at multiple grades, each candidate will be ranked separately by each grade for which the candidate applied.

D. In those cases where the Employer finds that the nature of the job requires more direct involvement of subject matter experts (SMEs) in rating the applicants, one (1) or more SMEs will assist in candidate evaluation.

E. Responses by candidates to the questions regarding competencies will be confirmed with information contained in the applicants' resume and the applicants' supporting documentation by one (1) or more of the SMEs.

F. The assessment of each candidate will be based solely on the documentation before the SMEs and not on the personal knowledge or opinion of the SMEs.

G. The Employer has determined that the SMEs must be of the same or higher grade than the position to be filled.

H. Responses to competency questions will be rated using a point system of one (1) to 100. The Employer will determine the point range that corresponds with the labels “qualified,” “well qualified,” and “best qualified” for each job before it is advertised.

I. Selective placement factors may be used to screen candidates if the selective placement factors are necessary for successful performance in the job and are related to major duties of the position. Where selective placement factors are used, they will be included in the relevant vacancy announcement.

G. If an announcement is cancelled, then all applicants will be notified within ten (10) business days of the date the certificate is cancelled.

Section 7
Applying for Consideration

A. Applicants are responsible for the submission of materials required by the vacancy announcement. In order to receive consideration for a vacancy, applications must be received by the specified closing date of the vacancy announcement and must comply with the instructions in the vacancy announcement.

B. If a CFTC employee is on an approved, extended absence with no access to USAJobs (*e.g.*, deployed due to military service), the employee may submit an application to HRB and indicate the type, location, and grade level of positions for which they wish to receive consideration during their absence. HRB will ensure applications are submitted for vacancies during the dates of the employee’s scheduled absence.

C. Applicants may request reasonable accommodation(s) when applying for positions by contacting HRB for assistance.

Section 8
Referral and Selection

A. Applicants will be rated on the extent and quality of their experience, education, and training relevant to the duties of the position. Applicants who meet the eligibility and qualification requirements will be ranked according to their rating scores. Those applicants ranked highest will be referred first.

B. At least seven (7) applicants will be referred and listed in alphabetical order on the certificate, unless fewer than seven (7) applicants are ranked as best qualified.

C. If there are fewer than three (3) best qualified applicants, the Employer may choose to re-announce the position or to refer applicants from the well qualified or qualified ranges.

D. The application materials of the referred applicants will be sent with the certificate. If the position was posted at more than one (1) grade, a separate certificate will be issued for each grade.

E. Applicants who are eligible for consideration under a non-competitive or special hiring authority and who meet the minimum qualification requirements of the position will be referred to the hiring manager on a separate list in alphabetical order.

F. Before the certificate is issued, the selecting official shall decide whether to conduct interviews personally or establish an interview panel, which may include the selecting official or his or her designee. Once the certificate is issued, if one (1) bargaining unit candidate is interviewed, all bargaining unit candidates must be interviewed.

G. An employee selected for a competitive merit promotion will be released from his or her present position at the end of the first full pay period after acceptance of the final job offer that has no contingencies (*e.g.*, background investigation or obtaining security clearance), unless a longer period is negotiated with the employee. An employee who is being promoted within the CFTC will normally be promoted and paid at the salary of the higher grade at the beginning of the first full pay period following the date of the acceptance of a final job offer that has no contingencies (*e.g*., background investigation or obtaining security clearance).

H. Absent exigent circumstances, an employee whose promotion is contingent (*e.g.*, background investigation or obtaining security clearance) will be promoted and paid at the salary of the higher grade at the beginning of the first full pay period following successful resolution of the contingency (*e.g.*, an interim security clearance is granted).

I. An employee who is selected for a lateral reassignment in the same geographic area will be placed into the new position no later than 30 days following the date of selection. The gaining Division or Office Director should allow time for the employee to transition. Unless the CFTC and employee agree to a different date, employees reassigned to a new geographic area will report to their new location no later than 90 days after their notification of transfer.

J. Each applicant who has not been selected for the competitive merit promotion will be notified within seven (7) business days of the selection or as soon as practicable. Upon request, each applicant will be provided the following information within 20 business days regarding his or her application for a competitive merit promotion under this Article:

1. Whether the employee was found basically eligible;
2. The number of applicants for a position and the number of candidates who were certified (employees are not entitled to the names, positions, or locations of other applicants);
3. The employee's score (if applicable); and
4. The name of the person who was selected for the position.

K. If requested, an applicant from the bargaining unit who was on the certificate but was not selected will be provided a written explanation from the selecting official within ten (10) business days of why he or she was not selected.

Section 9
Factors That May Not Be Considered

A. An employee's leave balances, request to use leave, or use of any type of approved leave may not be considered by rating panels, screening panels, or selecting officials as a basis for selection or non-selection. However, this does not preclude the consideration of the employee's dependability if the employee has been on a leave restriction within the preceding 12 months.

B. An employee who is the subject of an investigation for misconduct will not be denied or have a promotion delayed unless it is necessary to protect the mission of the Employer. The fact that an employee has not previously applied for, accepted, or has resigned from a prior competitive merit promotion for reasons other than misconduct, and the fact that an employee has or has not previously been reassigned or promoted, may not be considered by rating panels or selecting officials in the evaluation of candidates or as a basis for selection or non-selection.

Section 10
Improper Omission from Certificate

A. If HRB becomes aware that an employee was improperly omitted from a certificate, he or she will be notified. Upon request, the employee will receive priority consideration for the next appropriate merit promotion vacancy for which he or she is qualified. An appropriate merit promotion vacancy is one in the same geographical location with the same title, occupational series, grade, and career ladder that has the same promotion opportunities as the position for which the employee did not receive proper consideration. Priority consideration means that the employee's application will be submitted to the selecting official before the selecting official reviews the applications of any other qualified applicants.

B. Priority consideration does not entitle the candidate to priority selection (*i.e*., the selecting official is not required nor expected to select a priority consideration candidate simply because they meet the minimum qualifications of the position). However, priority consideration will ensure that the employee is given bona fide consideration by the selecting official before other candidates are sought.

C. An eligible employee will be granted the opportunity to request priority consideration for one (1) position for each time the individual did not receive proper consideration or up until three (3) years from the date of the referral, whichever comes first.

D. If two (2) or more employees are entitled to priority consideration for the same merit promotion, their names will be submitted to the selecting official in alphabetical order accompanied by their application materials.

E. If a priority consideration applicant is not selected, the employee may request that the Employer prepare a written statement of the reasons why the employee was not selected. Upon request, a copy of this statement will be provided to the employee(s) within 20 business days after receipt of the request by the Employer.

Section 11
Provision of Information to the Union

Consistent with 5 U.S.C. § 7114(b)(4), the Union may request information concerning the filling of vacancies within the bargaining unit.

ARTICLE 19: EXCEPTED SERVICE HIRING AND PROMOTION

Section 1
Equal Employment Opportunity

A. Actions taken under this Article shall be made without regard to race, color, religion, sex (including pregnancy and gender identity), national origin, political affiliation, sexual orientation, marital status, disability, genetic information, age, membership in an employee organization, retaliation, parental status, military service, or other non-merit factor.

B. This Article addresses practices for employment in positions excepted from the competitive service as identified in 5 C.F.R. Parts 213 and 302. These positions are excluded from the competitive service by or pursuant to statute, Executive order, or Office of Personnel Management (OPM) action. OPM exclusions are covered under Civil Service Rule VI (5 C.F.R. Part 6) and are divided into Schedules A, B, C, and D.

Section 2
Excepted Service Positions

A. Excepted service positions are defined as those civil service positions that are not in the competitive service or the Senior Executive Service (SES) (5 U.S.C. § 2103). An excepted service position is specifically excepted from the competitive service by or pursuant to statute, by the President, or by OPM, and therefore may be filled without competitive examining procedures. An excepted position may or may not be covered by the Classification Act and other civil service laws. Some positions, such as attorney positions, are always in the excepted service regardless of the incumbent. Other positions are in the excepted service only when filled by individuals who are given excepted service appointments, such as persons with disabilities under 5 C.F.R. § 213.3102(u).

1. Schedule A. Schedule A appointments are authorized by OPM when competitive examining procedures are not practicable and when the position is not of a confidential or policy-determining character, and is not in the SES (5 C.F.R. § 213.3101). Examples of such positions are attorneys, law clerk trainees, and all others listed under 5 C.F.R. § 213.3102.
2. Schedule B. Schedule B appointments are authorized by OPM, subject to the OPM's "General Schedule Qualification Standards," for the occupation and grade or band level when it is determined that competitive examining procedures are not practicable and when the position is not of a confidential or policy-determining character and is not in the SES (5 C.F.R. § 213.3201).
3. Schedule C. Schedule C appointments require advance approval from OPM and are of a policy-determining character or involve a close and confidential working relationship with the Chairman or Commissioners and similar key appointed officials, including some confidential or special assistants and secretaries.

4. Schedule D. Schedule D appointments are internship appointments under the Pathways Programs.
5. Intermittent and/or Temporary Expert and Consultant Appointments. Expert and consultant appointments under 5 U.S.C. § 3109 are excepted from competitive examination, position classification, and the General Schedule pay rates pursuant to 5 C.F.R. Part 304.

B. Trial Periods. Consistent with law, regulation, and CFTC policy, the Employer requires satisfactory completion of a two (2) year trial period for employees in the excepted service, except for appointments where regulations require a shorter period. The trial period has the same purpose as a probationary period in the competitive service (*i.e*., management has a period of time within which to evaluate a new employee's performance and conduct, and also to determine whether his or her continued employment is in the best interest of the Employer).

C. Non-competitive conversion to a competitive appointment. Any person appointed to an excepted service position with authority for future non-competitive conversion to a competitive appointment is required to meet the conditions of that specific excepted appointing authority. For instance, some appointments (*e.g*., Veterans' Recruitment Appointment, Schedule A, and Schedule D) require a period of conditional employment of two (2) years, which must be completed prior to the non-competitive conversion to a career or career-conditional appointment.

D. Position Changes. An excepted service employee may be promoted, demoted, or reassigned to another excepted service position in the CFTC subject to any applicable regulations, requirements of law, and provisions of this Article. For each change, the conditions of the new appointing authority must be met.

E. Veterans' Preference. In accordance with 5 C.F.R. § 302.101(a) and (c), the CFTC will follow the principle of veterans' preference as far as administratively feasible, will treat veterans' preference eligibility as a positive factor at all stages in the hiring process, and, upon the request of a qualified and available preference-eligible candidate, shall furnish him or her with the reasons for his or her non-selection.

Section 3
Area of Consideration

A. The area of consideration is the area in which an active search of candidates is made. The minimum area of consideration is that area in which it can be reasonably expected that a sufficient number of qualified employees will be located. The area of consideration should be sufficiently broad to attract high quality candidates, taking into account the nature and level of the position being filled. The minimum area of consideration will be CFTC-wide.

Section 4
Vacancy Announcements

A. Announcements for bargaining unit positions will be advertised on the USAJobs website. CFTC vacancy announcements shall follow a standard format. Each vacancy announcement will include the information required in 5 C.F.R. § 330.104. The Employer shall send a weekly CFTC-wide email, titled "Weekly Job Vacancies Announcement," providing a link to open vacancy announcements and a link to USAJOBS guidance on how to sign up for email notifications. Vacancy announcements under this Article will remain open for a minimum period of five (5) business days.

B. The Employer may use vacancy announcements without specific closing dates to advertise recurring vacancies or when recruitment is expected to be difficult. When a sufficient number of candidates apply for consideration or at predetermined cut-off dates, the Employer may establish a register for a period not greater than six (6) months from which the selecting official may consider candidates for applicable vacancies. If the selecting official decides to modify the rating schedule or competencies in order to attract more qualified applicants, HRB will notify previous applicants of the reposted vacancy announcement and that they will need to reapply and will be re-rated against the revised criteria.

C. Amended announcements will indicate that they have been modified.

Section 5
Qualifications Review and Ranking of Applicants

A. Vacancy announcements must be used when the Employer elects to advertise vacancies that will be filled through excepted service procedures, with the exception of political appointments.

B. Competency questions may be used in the automated screening process to determine the applicant's score. These questions reflect the requirements of the position and give a weight to each question according to the importance of the competency to the position.

C. Selective placement factors may be used to screen candidates if the selective placement factors are necessary for successful performance in the job and are related to major duties of the position. Where selective placement factors are used, they will be included in the relevant vacancy announcement.

Section 6
Applying for Consideration

A. Applicants are responsible for the submission of materials required by the vacancy announcement. In order to receive consideration for a vacancy, applications must be received by

the specified closing date of the vacancy announcement and must comply with the instructions in the vacancy announcement.

B. If a CFTC employee is on an approved, extended absence with no access to USAJobs (*e.g.*, deployed due to military service), the employee may submit an application to HRB and indicate the type, location, and grade level of positions for which she or he wishes to receive consideration during their absence. HRB will ensure applications are submitted for vacancies during the dates of the employee's scheduled absence.

C. Applicants may request reasonable accommodation when applying for positions by contacting HRB for assistance.

Section 7
Referral and Selection

A. Candidates who meet the qualification requirements as stated in the vacancy announcement will be referred to the selecting official.

B. Interviews are highly recommended. The selecting official has the discretion to interview some, none, or all of the candidates from the list of eligible candidates, but if one (1) current bargaining unit employee is interviewed, all current bargaining unit employees will be interviewed.

C. Selection Actions.

1. No Selection. The selecting official is not required to make a selection from the list of eligibles. For example, a determination may be made not to fill the position and to cancel or abolish the position as a result of budget constraints.
2. Selection. After consideration of all candidates referred, the selecting official may select any referred applicant based on an assessment and comparison of the qualifications of the applicant in relation to the requirements of the job.

D. Documenting Selection.

1. The selecting official documents selection(s) on the certificate before returning it to the HR specialist. If a position is advertised at more than one (1) grade level, selections may be made at any of the advertised grade levels. If the selecting official does not select any of the applicants, the decision must be annotated on the certificate(s). The selecting official has the right not to select any applicant that is referred.
2. HRB Review. HRB will review the selecting official's decision to select a candidate to ensure that the selection meets legal and regulatory requirements. All selections are subject to the candidate's satisfactory completion of any pre-employment requirements (*e.g.* drug tests, security clearances, physicals, etc.).

E. Only HRB may make an offer of employment.

F. Release Date of Candidate.

1. An employee selected for a promotion will be released from his or her present position at the end of the first full pay period after acceptance of the final job offer that has no contingencies (*e.g.*, background investigation or security clearance), unless a longer period is negotiated with the employee. An employee who is being promoted within CFTC will normally be promoted and paid at the salary of the higher grade at the beginning of the first full pay period following the date of the acceptance of a final job offer that has no contingencies (*e.g.*, background investigation or security clearance).
2. Absent exigent circumstances, an employee whose promotion is contingent (*e.g.*, background investigation or security clearance) will be promoted and paid at the salary of the higher grade at the beginning of the first full pay period following successful resolution of the contingency (*e.g.*, an interim security clearance is granted).
3. An employee who is selected for a lateral reassignment in the same geographic area will be placed into the new position no later than 30 days following the date of selection. The gaining Division or Office Director should allow time for the employee to transition. Unless the Employer and employee agree to a different date, employees reassigned to a new geographic area will report to their new location no later than 90 days after their notification of transfer.
4. HRB coordinates release dates for employees promoted to CFTC positions from other federal agencies with those agencies and the individual selected. CFTC supervisors whose staff are selected for promotion to positions outside the CFTC should release employees as soon as possible, generally within one (1) full pay period of the release request.
5. Information to Candidates. A candidate may check the status of their application to a specific vacancy announcement through USAJobs. The servicing HR specialist may notify all candidates who applied under a vacancy announcement of the outcome of their consideration. The following information about specific selections for positions will be available to employees at their request:
   (a) Whether the employee was found basically eligible;
   (b) The number of applicants for a position and the number of candidates that were certified; however, employees are not entitled to the names, positions, or locations of other applicants;
   (c) The employee's score (if applicable); and
   (d) Who was selected for the position.

Section 8
Promotions and Reassignments in the Excepted Service

A. Promotions and reassignments will be handled in the same manner and under the same conditions as they are handled in the competitive service.

B. Employees serving in Schedule A and Schedule C appointments will be required to remain in grade for at least one (1) year before they are eligible for promotion. Promotion of individuals appointed under Schedule C requires advance OPM approval.

Section 9
Provision of Information to the Union

Consistent with 5 U.S.C. § 7114(b)(4), the Union may request information concerning the filling of vacancies within the bargaining unit.

ARTICLE 20: REASSIGNMENTS

Section 1
Non-Competitive Reassignments

A. This Article addresses the non-competitive reassignment of permanent employees from one (1) position to another (including reassignments to a different duty station) where the Employer has decided not to fill the position through a competitive vacancy announcement. The term "reassignment," as used in this Article, includes directed and voluntary reassignments.

B. Reassigned employees will be provided a reasonable amount of administrative time to pack and unpack their belongings and will be offered available seating assignments in the new position based on seniority. For purposes of this Article, seniority is defined as length of service from entry on duty with the Employer.

Section 2
Voluntary Reassignments

A. The following procedures will apply unless a reassignment is directed for a specific employee or group of employees based on reasons stated in Section 4 of this Article:

1. Candidates requesting reassignment because of significant hardship as described in Section 3 of this Article will be considered first;
2. If reassignment needs have not been met under Section 3 of this Article, the Employer will issue an announcement seeking employees who wish to be voluntarily reassigned into the advertised position(s). The announcement will provide details of the position, including required qualifications;
3. Employees who wish to apply for the reassignment opportunity will provide the required documentation/resume as stated in the announcement;
4. The Employer will review the documentation/resumes submitted by interested employees and determine which employees have met the qualifications for the position. In addition to the required qualifications, the Employer may consider an employee's additional qualifications that are relevant to the position and the employee's prior performance or formal history of discipline, including whether an employee participated in a formal performance improvement process within the last 12 months;
5. If the Employer elects to interview qualified candidates, all qualified employees who submitted a statement of interest must be interviewed;
6. If there are more equally qualified applicants than needed, then the employee(s) with the most seniority will be reassigned, provided such reassignment does not create a new staffing imbalance. Otherwise, the next most senior candidate(s) will be selected.

7. Employees selected for voluntary reassignment to a different duty station are not entitled to relocation benefits unless relocation benefits are specifically authorized in the announcement.
8. If management determines that reassignment needs cannot be met under this Section 2 of this Article, the Employer will involuntarily reassign employee(s) in accordance with Section 4 of this Article.

Section 3
Request for Voluntary Reassignment Due to Significant Hardship

A. The Employer agrees to consider an employee's request for voluntary reassignment when:

1. The employee is qualified to perform the work;
2. There is a funded vacant bargaining unit position at an existing CFTC duty station that the Employer intends to fill; and
3. The employee demonstrates a significant hardship as set forth below:
   (a) A serious medical condition of a non-temporary nature affecting the employee or a member of the employee's immediate family as defined in the FMLA; or
   (b) Lack of access by the employee or a member of the employee's immediate family, as defined in FMLA, to special education for a documented disability or a medical facility in the employee's current commuting area; or
   (c) The employee's spouse or domestic partner has been involuntary transferred to a job in a new location or has military orders to relocate outside the employee's current commuting area; and
   (d) The employee's significant hardship would be relieved by his or her reassignment.

B. An employee seeking a significant hardship reassignment must submit a request to HRB. The employee must provide appropriate documentation concerning the condition that gave rise to the significant hardship request along with his or her resume/application and most recent performance appraisal. The employee must indicate the specific bargaining unit position and Division/Section/Duty Station to which he or she seeks reassignment.

C. In addition to the employee's qualifications, the Employer may consider the employee's history of formal discipline and performance history, including whether the employee participated in a formal performance improvement process within the last 12 months.

D. Employees granted reassignments due to significant hardship are not entitled to relocation benefits. An employee's request, whether made at the beginning of the calendar year or thereafter, will remain active only until December 31 of that year. In addition, the hardship must still exist at the time the employee is notified of the opportunity to relocate.

E. Nothing in this Article precludes an employee from applying for a position in response to a vacancy announcement.

Section 4
Directed Reassignments

A. The Employer may reassign employees consistent with its rights and obligations under 5 U.S.C. § 7106(a)(2)(A) and (B). Before directing reassignments, the Employer agrees to consider voluntary reassignments in accordance with Section 2 of this Article.

B. Reassignments will only be made for legitimate organizational reasons including:
1. Organizational changes by the CFTC (*e.g.*, realignment, restructuring, or reorganization);
2. Staffing imbalances resulting from promotions, retirements, and separations; and
3. The settlement of workplace issues or EEO disputes where the settlement or EEO decision explicitly calls for reassignment.

C. The Employer may reassign without regard to an employee's RIF retention standing.

D. An employee who refuses to accept a directed reassignment may be subject to discipline up to and including removal. An employee who refuses to accept a directed reassignment to a different geographic area may be eligible for benefits and should contact the Human Capital Officer or his or her designee for details.

E. Employees who accept directed reassignments to different geographic areas are eligible for relocation expense allowances in accordance with law, rule, and regulation.

F. The Employer agrees to consider evidence from the employee that demonstrates an involuntary reassignment will cause a significant hardship including, but not limited to, the factors in Section 3.A.3 of this Article.

G. Where the Employer directs a reassignment, the Employer will notify the Union of its intention to reassign employees. The names of the impacted employees (*i.e.*, those who are qualified to be reassigned) for the new assignment(s) will be provided to the Union in the notice. The impact and implementation of the reassignment will be negotiated to the extent required by law. For purposes of any impact and implementation bargaining over this Article, the Parties agree that only matters expressly contained in this Article are not subject to further impact and implementation bargaining.

Section 5
Reassignment Date

A. An employee who is selected for a voluntary reassignment in the same geographic area will be placed into the new position no later than 30 days following the date of selection. The gaining Division or Office Director should allow time for the employee to transition.

B. Unless the Employer and employee agree to a different date, employees reassigned to a new geographic area will report to their new location no later than 90 days after their notification of transfer.

C. In all other cases, and absent exigent circumstances, the Employer will provide an employee with written notice of a reassignment as far in advance as practicable, but not less than one (1) pay period prior to the reassignment date. The employee will receive a Standard Form 50, Notification of Personnel Action, via Electronic OPF (eOPF) documenting the reassignment and a copy of the position description for the new job.

ARTICLE 21: DETAILS AND TEMPORARY PROMOTIONS

Section 1
Definition

A detail is defined as the temporary assignment of an employee to a different position or to a different set of job duties for a specified period, with the employee returning to his or her regular duties at the end of the assignment. The provisions of this Article apply only to details to bargaining unit positions within the CFTC. Details will be made in accordance with applicable laws, rules, regulations, and this Article.

Section 2
Details to Congress and CFTC Commissioners

The Parties recognize that specific employees may be requested to perform work on a temporary basis for Congressional staff and for CFTC Commissioners. Accordingly, the Employer may make such details without regard for the provisions in Section 3 of this Article.

Section 3
Detail Procedures

A. The Employer has the right to detail employees based upon staffing, mission, and workload requirements. In effecting or continuing a detail, the Employer may consider an employee's prior performance and history of formal discipline, including whether the employee has participated in a performance improvement process within the last 12 months. Such consideration will not be for the purpose of detailing an employee for punitive reasons. In effecting or continuing a detail, the Employer agrees to reasonably consider a written request by an employee to be excused based on a demonstrated personal hardship. A personal hardship for the purpose of this Article consists of a significant difficulty or expense resulting from the detail (*e.g.*, required change in schedule results in an issue meeting daycare pick-up and drop-off timeframes, cancellation of scheduled vacation, or a concern about ability to perform the work).

B. Absent an immediate need to detail an employee to address disciplinary or EEO concerns and/or to meet mission-related requirements, the Employer will use the following procedures prior to effecting the detail of any employee:

1. The Employer will identify a pool of employees eligible to apply for the detail, specify the qualifications required for the detail, and publicize the detail opportunity;
2. Employees who wish to express interest in the detail opportunity will provide the required documentation/resume as stated in the publication of the detail opportunity;
3. The Employer will review the documentation/resumes submitted by interested employees and determine which employees have met the qualifications for the position; in addition to the required qualifications, the Employer may consider an employee's additional qualifications that are relevant to the position;

4. If the Employer elects to interview qualified candidates, all employees who submitted a statement of interest must be interviewed;
5. If there are more equally qualified employees than needed, the employee(s) with the most seniority will be detailed (seniority is defined as length of service from entry on duty with the Employer); otherwise the most qualified candidate(s) will be selected;
6. If the most senior qualified volunteer has been detailed to the same detail opportunity in the past 24 months, the detail will be given to the next most-senior employee;
7. If no qualified employees apply, the Employer will select from the pool identified in Section B.1 of this Article in order of reverse seniority;
8. If the least senior qualified volunteer has been detailed to the same detail opportunity in the past 24 months, the detail will be given to the next least-senior employee; and
9. When the duration of the detail is such that more than one (1) individual will be detailed, selection will be made on a rotational basis in order of seniority or inverse seniority as stated above.

C. When an immediate need to detail an employee to meet mission-related requirements exists, the Employer may temporarily and involuntarily detail a qualified employee as determined by the Employer. The detail opportunity will be publicized in accordance with Section 3.B of this Article on or before the day the involuntary detail begins or as soon as practicable thereafter. The involuntary detail may be extended if management determines that assignment to another employee will significantly impact mission accomplishment. In each case, when the Employer details an employee based on an immediate need or extends such a detail based on a significant impact, the Employer will provide the Union with notice within one (1) business day along with an explanation of the reasons for this action. The Employer will reasonably consider any request by an employee involuntarily selected under this provision to be excused based on a demonstrated personal hardship.

Section 4
Notice of Involuntary Detail to New Official Duty Station

Absent extraordinary circumstances, an employee will receive at least 15 calendar days advance notice of selection for an involuntary detail to a different Official Duty Station. In all other cases, the employee will receive reasonable advance notice.

Section 5
Temporary Promotion

A. An employee who is qualified for and expressly detailed to a higher graded bargaining unit position for a period of more than 30 consecutive calendar days will be temporarily promoted to the higher graded position effective with the beginning of the first (1st) full pay period after the detail begins. The temporary promotion will be documented by a Standard Form 50, Notification of Personnel Action, in eOPF. The employee will be paid at the higher grade for

the duration of the temporary promotion, the term of which will be no more than 120 calendar days.

B. Employees who believe they have been assigned a majority of the duties of an already classified, higher-graded position, including all of the grade-controlling duties of that position, without an express temporary promotion must notify the Employer within 20 calendar days of that assignment that they may be entitled to a temporary promotion. In order to be eligible for a temporary promotion, the employee must:

1. Be temporarily reassigned a majority of the duties of an already classified, higher-graded position;
2. Be reassigned duties different from the duties of the lower-graded employee's permanent position; and
3. Such duties must not be assigned merely to meet an urgent mission requirement, to give the employee experience as part of an employee development or succession plan, or for similar reasons.

C. Upon notification from the employee that the employee believes he or she is entitled to a temporary promotion, the Employer will inform the employee within five (5) business days whether the Employer agrees that the employee has been temporarily assigned to a higher-graded position.

D. If the Employer verifies that the employee has been assigned to a higher-graded position, the employee will either: (1) come off the detail and revert to his or her previous position; (2) remain on the detail but no longer be assigned duties of a higher-graded position but only those commensurate with the employee's current grade level; or (3) if the employee is eligible, be temporarily promoted consistent with this Article. Where the Employer verifies that the employee is entitled to a temporary promotion, the employee will be paid at the higher grade, from the earliest possible legal effective date, and for a cumulative period not to exceed 120 calendar days.

E. If the Employer believes the employee is not eligible for a temporary promotion, the Employer will identify the reasons for that determination and provide them in writing to the employee.

F. Details for more than 120 days to higher graded positions or positions with higher promotion potential must be competed in accordance with Article 18 of this Agreement (Merit Promotion Procedures) and Article 19 of this Agreement (Excepted Service Positions).

Section 6
OPF Documentation

Details of more than 30 calendar days and all temporary promotions will be documented in the employee's OPF in accordance with OPM regulations and will be available to the employee via eOPF.

Section 7
Reimbursement for Travel

Employees detailed outside their permanent Official Duty Station are entitled to reimbursement of travel expenses in accordance with law, rules, and regulations; however, if the announcement of the detail opportunity specifies that travel will not be reimbursed, an employee who volunteers and is selected for that detail will not receive reimbursement.

ARTICLE 22: TRAINING

Section 1
Training

A. The Employer will make available, as funds permit, the training it deems necessary for the performance of the employees' presently assigned duties or proposed assignments. In accordance with 5 C.F.R. §410.306, the Employer will maintain criteria for the fair and equitable selection and assignment of employees to training consistent with merit system principles specified in 5 U.S.C. § 2301(b)(1) and (2). The Employer will notify the Union within ten (10) business days of the establishment of any new criteria under this Section 1 of this Article and bargain to the extent required by law. The Employer will provide information about CFTC-sponsored training or educational programs to employees. With the exception of training offered or assigned to specific employees to address performance or personnel issues, when a particular training opportunity is only offered to a particular office or group of employees, the Employer will provide the information about such opportunity to all employees in that group or office consistent with the provisions of this Article. The Employer will determine the most efficient method to distribute information about the training, generally by email and/or the CFTC's intranet.

B. To the extent practicable, the Employer will provide information to employees about training and conferences from other sources that the Employer makes widely available to bargaining unit employees. The Employer will determine the most efficient method to distribute information about the training, generally by email and/or the CFTC's intranet.

C. In conjunction with Sections 1.A and 1.B of this Article, and in accordance with 5 C.F.R. §410.303, employees are responsible for self-development, for successfully completing and applying authorized training, and for fulfilling continued service agreements. Moreover, employees share with their agencies the responsibility to identify training needed to improve individual and organizational performance and to identify methods to meet those needs, effectively and efficiently. Employees may request consideration to participate in training, professional meetings, professional development, conferences, or continuing education courses; however, in cases where the Employer determines that it will not fund the activity, the Employer will make a reasonable effort to grant an employee's written request for annual leave, leave without pay, earned credit hours, and/or earned compensatory time. Requests will be considered consistent with workload and staffing needs. The Employer will consider and may approve an employee's request for excused absence where the training is directly related to the employee's official duties.

D. An employee may request an individual development plan, which is a tool to assist employees in career and personal development. Its primary purpose is to help employees reach short and long-term career goals as well as improve current job performance.

Section 2
Continuing Education

A. Where possible to do so without incurring additional costs, the Employer shall provide continuing education and training opportunities to all attorneys and non-attorney professionals who are required to complete continuing education for maintenance of their professional licenses (*e.g.*, PLI, Becker, and in-house training). Such continuing education opportunities will be related to an employee's work with the Employer.

Section 3
Conferences, Meetings, and Other Events

A. An employee may request excused absence or personal leave to attend a widely attended gathering, as defined by 5 C.F.R. § 2635.204(g)(2), where such attendance would otherwise constitute an unsolicited gift, provided that the employee receives written CFTC ethics clearance to attend. A request for approval of excused absence may be granted at the Employer's discretion. A request for approval of personal leave will be considered in accordance with procedures established in Article 33 of this Agreement (Annual Leave).

B. A request for approval of excused absence must be submitted to the Office of the Executive Director to determine the appropriate level for consideration. Requests for CFTC ethics clearance and approval of leave will be timely submitted and timely decided.

C. If a request for excused absence is granted by the Employer, the employee will be granted excused absence for the amount of time specified. Travel expenses will be borne by the employee. If CFTC ethics office determines that the employee's attendance at the conference, meeting, or other event is not permissible under 5 C.F.R. Part 2635, Subpart B, the employee may still attend if he or she pays market value and uses approved leave.

ARTICLE 23: NEW EMPLOYEE ORIENTATION

Section 1
Orientation for New Employees

A. The Employer will provide the Union with a 20 minute period of official time during the Employer's initial employee orientation to address new bargaining unit employees. This time for NTEU to present to newly hired employees will be provided to NTEU immediately preceding a ten (10) minute break. The NTEU orientation and break time will take place at the same location as and at a time adjacent to the Employer's initial employee orientation session. The Employer will furnish the orientation room with audio-visual equipment suitable for showing or streaming an NTEU video. The Employer will introduce the NTEU representative(s) during new employee orientation sessions and will provide a printed copy of this Agreement to each new employee. The Employer will also make employees aware of the location and availability of the on-line version of this Agreement and allow employees and Union stewards to print copies. The Employer will also provide National NTEU with an electronic copy of this Agreement. In the orientation, the NTEU steward will provide to each new bargaining unit employee a package of material provided by NTEU. The Union will provide the Employer with a courtesy copy of such material in advance of the orientation session.

B. NTEU will have the right to discuss this Agreement, current labor/management issues, the laws and regulations on federal-sector labor relations, its internal structure, and any other subject that does not slander or libel a government official or connote Employer sponsorship of the Union and is consistent with law, rule, or government-wide regulation and the supplemental CFTC ethics regulations.

C. As soon as practicable, but normally not less than two (2) business days before the orientation will be held, the Employer will provide NTEU with notice of the time, date, and location of the orientation. Orientation will typically occur on the first Monday of the pay period at the CFTC HQ location, and the first Tuesday of the pay period in the CFTC regional offices. At the time of the notice, the Employer will provide the Union with a copy of the new employee roster, including bargaining unit employees' names, positions, and duty stations. At least one (1) business day before the employee's initial orientation, NTEU will provide the Employer with the name(s) of the NTEU representative(s) who will be attending the orientation.

Section 2
Current Employees New to Bargaining Unit

The Employer's Workforce Relations Section will notify the Union when a current employee outside of the bargaining unit moves permanently into a position in the bargaining unit. The Union may contact the employee to arrange a meeting for up to 20 minutes, subject to work requirements, during the employee's first week of duty in the new position for the purposes

described in this Article. This does not apply to employees returning from a detail or reassignment to a non-bargaining unit position.

Section 3
Training for Employees

During the first year of this Agreement, each employee will be entitled up to two (2) hours of duty time to attend an NTEU-sponsored training session regarding this Agreement. Within 30 calendar days of a request, the Employer will provide an on-site meeting room for such sessions. Two (2) years from the effective date of this Agreement, and each succeeding 12 months thereafter, each employee will be entitled to up to one (1) hour of duty time to attend an NTEU-sponsored training session to receive similar training.

ARTICLE 24: RETIREMENT

Section 1
Retirement Information

A. At any time during their employment with the Employer, employees may obtain personal retirement information from the Employer on duty time. During new employee orientation sessions, the Employer will provide information on how to access the Thrift Savings Plan (TSP) and the Federal Retirement Thrift Investment Board websites. Additional retirement information and materials are available from sources such as the OPM website (https://www.opm.gov/retirement-services/).

B. Employees will have access to their personal benefits information through the National Finance Center Employee Personal Page (EPP). The Employer will notify all employees on at least an annual basis of the existence of the EPP and how to access that system.

Section 2
Retirement Counseling

A. The Employer agrees that employees covered under the Civil Service Retirement System (CSRS), CSRS Offset, or Federal Employees Retirement System (FERS) shall be given an opportunity to voluntarily participate in an Employer sponsored pre-retirement planning seminar on a space-available basis. Topics in the seminar may include, but are not limited to: the CSRS, CSRS Offset, or FERS benefits; Employer and federal benefits; health benefits; and TSP.

B. The frequency of pre-retirement planning seminars will be determined by the Employer, but, subject to funding, will occur no less than once a year. Based on available resources, supplemental seminars may be convened if demand exceeds available spaces. All such seminars will be made available via video teleconference or similar technology for all employees who are not on site or are prevented from attending in person due to space constraints. Employees may participate in these programs on duty time. If demand exceeds available space, participation will be determined on a first come, first served basis.

C. Employees who have specific questions regarding their retirement benefits may request individual retirement counseling and may request an individual accounting of their estimated retirement benefits at any time.

Section 3
Withdrawal of Resignation

The Employer may permit an employee to withdraw his or her resignation at any time before it has become effective. The Employer may decline a request to withdraw a resignation before its effective date only when the Employer has a valid reason and explains that reason in writing to

the employee. If the employee disagrees with the Employer's reason for denial, then the grievance procedures in Article 38 of this Agreement (Grievance Procedure) may be invoked.

Section 4
Union Information for Retirees

When a bargaining unit employee requests an application for retirement from the Employer, the Employer will inform the employee that the employee may also contact the Union for additional retirement information.

ARTICLE 25 EQUAL EMPLOYMENT OPPORTUNITY

Section 1
General

A. The Employer and the Union recognize that discrimination prohibited by equal employment opportunity (EEO) law undermines the integrity of the employment relationship and adversely affects employee opportunities. All employees must be allowed to work in an environment free from unlawful discrimination.

B. Consistent with law, government wide regulation, and CFTC policy, no employee may discriminate against others based on race, color, religion, sex, national origin, age (40 or older), disability, or genetic information.

C. Consistent with law, government wide regulation, and CFTC policy, the Employer and the Union commit to providing each employee equal opportunity regardless of the employee's race, color, religion, sex, national origin, age (40 or older), disability, or genetic information.

D. The Employer and the Union are strongly encouraged to resolve their concerns informally prior to submitting grievances under this Article.

Section 2
EEO Program

The Employer's EEO program shall be administered by the Employer in accordance with applicable laws, rules, regulations, and this Article.

Section 3
OMWI Diversity Workgroup

The Office of Minority Women and Inclusion (OMWI) will maintain a diversity workgroup. The Chapter President or her or his designee will be invited to all meetings of the diversity workgroup. The workgroup will serve as an advisory body on practices that promote a high performing, diverse, and engaged workforce. All guidance and recommendations shall be consistent with applicable laws, rules, regulations, and merit systems principles.

Section 4
Reporting and Counseling

A. Each year that this Agreement is in effect, the Employer will provide to the Union a copy of the Management Directive 715 (MD-715) report prior to posting it on its website or within 30 days of filing this report, whichever is earlier. At the request of the Union, the Employer will brief the Union on the MD-715 report.

B. Upon reasonable notice, the Employer will make available a private room or office for EEO counselors at each step of the EEO process, such as counseling, alternate dispute resolution, investigation, meeting with EEO staff, and deposing witnesses.

Section 5
Election of Forum

A. A claim involving discrimination based upon race, color, religion, sex, national origin, age (40 or older), disability, or genetic information may, at the discretion of the employee, be raised either under the Employer's EEO complaint process within 45 days of the event, consistent with law, or through the grievance procedure provided in Article 38 of this Agreement (Grievance Procedure), but not both. Consistent with law, an employee will be deemed to have exercised his or her option to raise a matter either under the Employer's EEO complaint process or under the negotiated grievance procedure at such time as the employee timely files a formal complaint of discrimination with the EEO office or timely files a grievance in writing concerning the alleged discrimination in accordance with the provisions of Article 38 of this Agreement (Grievance Procedure), whichever event occurs first.

B. Any employee seeking to file an EEO complaint or any employee participating in the Employer's administrative complaint process shall be free from restraint, coercion, interference, or reprisal. Employees engaged at any stage in processing the EEO complaint, including the counseling stage, shall have the right to be accompanied, represented, and advised by a personally chosen representative when there is no apparent or actual conflict of interest or other basis for denial (such as presence being inconsistent with CFTC security policy). Both the employee and the employee's representative, if either is in a duty status, shall be afforded a reasonable amount of official time for the initial preparation of the employee's pre-complaint as well as for each subsequent step of the complaint procedure.

ARTICLE 26: REASONABLE ACCOMMODATION

Section 1
General

A. Consistent with law and government-wide regulation, the Employer will afford a reasonable accommodation to qualified individual employees with a disability who can carry out the essential functions of their assigned position with such accommodation and provided the accommodation does not create an undue hardship for the Employer. Examples of reasonable accommodations could include:

1. Making existing facilities used by employees readily accessible to and usable by an individual with a disability;
2. Restructuring a job;
3. Modifying work schedules;
4. Acquiring or modifying equipment;
5. Providing qualified readers or interpreters;
6. Appropriately modifying examinations, training, or other programs; or
7. Reassigning a current employee to a vacant position for which the individual is qualified.

Section 2
Documentation

A. Consistent with EEOC regulation and case law, when the disability and/or the need for accommodation is not obvious, the Employer may ask the individual for reasonable documentation about his or her disability and functional limitations. Upon receipt of properly supported documentation, or in the case where no additional documentation is requested by the Employer and where the Employer has determined that the employee is disabled as defined in 29 C.F.R. § 1630.2(g), the Employer and employee will engage in an "interactive process" to identify a potential reasonable accommodation that will allow the employee to perform the essential functions of the position. The process will be as follows:

1. The Employer will analyze the particular job involved and determine its essential functions;
2. In cooperation with the employee and the employee's medical care provider, if applicable, the Employer and the employee will attempt to identify a range of possible reasonable accommodations that have the potential to allow the employee to effectively perform the essential functions of his or her position;
3. If various possible alternative reasonable accommodations are identified, the Employer will select the reasonable accommodation to be provided, absent undue hardship, and may consider the preference of the employee; and
4. Time limits for decision making will be as short as reasonably possible.

B. If the reasonable accommodation conflicts with the terms of this Agreement or past practice or requires more than a *de minimis* change in the conditions of employment of other bargaining unit employees, the Employer will serve notice and bargain to the extent required by law pursuant to the provisions of Article 6 of this Agreement (Midterm Bargaining). Such bargaining will not delay the implementation of the reasonable accommodation when such implementation is necessary to allow the employee to continue in a duty status.

ARTICLE 27: ANTI-HARASSMENT

Section 1
Definition

Unlawful harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information. Unlawful harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Americans with Disabilities Act of 1990. Harassment becomes unlawful where enduring the offensive conduct becomes a condition of continued employment, or the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Section 2
Procedure

A. The employee may make a complaint in writing to her or his immediate supervisor or, if preferred or the supervisor is the alleged perpetrator, any member of management.

B. An investigation will be conducted by a designated member or members of management. The investigation should be conducted thoroughly, objectively, with sensitivity, confidentially (*i.e.*, the investigators will share or release their findings only with individuals with a need to know), and with due respect for the rights of both the employee and the alleged perpetrator(s).

C. Reasonable effort should be made to initiate the investigation within 15 calendar days of the complaint and, absent exigent circumstances, the investigation will be initiated within 30 calendar days of the complaint. The investigation will normally be completed within 60 calendar days of the submission of the complaint.

D. On completion of the investigation, the investigator(s) will submit a written report to management containing the findings of the investigation.

E. The employee and the alleged perpetrator(s) will be informed in writing of the findings of the investigation.

F. Should management decide that the complaint is substantiated, the alleged perpetrator may be subject to remedial action, such as counselling, training, and/or disciplinary action up to and including removal.

Section 3
Training

The Employer will provide training to bargaining unit employees on anti-harassment procedures and preventative measures.

Section 4
EEO and Grievances

Nothing in this Article shall limit an employee's rights to pursue relief before the EEOC or pursuant to the negotiated grievance procedure in Article 38 of this Agreement (Grievance Procedure). However, the time periods in which to file such claims are not tolled by this Article.

ARTICLE 28: PERSONNEL RECORDS AND ACCESS TO INFORMATION

Section 1
Access to Information

A. All personnel records will be maintained and accessed in accordance with applicable law and regulation, including the Privacy Act of 1974, as amended, and the Federal Records Act. Employees or their personally designated representatives will, upon request, be given access to the employee's record or to any information pertaining to them that is contained in a system or records indexed and retrieved by the employee's name or personal identifier with the exception of records restricted by law or government-wide rule or regulation. Before disclosure of a record is made to employees or their personally designated representatives, the identities of both must be verified. Employees must provide their prior written consent to the Employer before disclosure of their written record will be made to a designated representative or in the presence of a designated representative. Employee access shall be on duty time. Steward access will be on official time.

B. Employees or their personally designated representatives may obtain a photocopy of documents pertaining to the employees with the exception of records restricted by law or government-wide rule or regulation.

C. Documents shall be provided within the time frames specified in Section 3.B of this Article.

Section 2
Notification

Upon implementation of the eOPF, an employee will receive automated notification any time a record is placed in the employee's personnel file.

Section 3
Procedures to Access Information

A. Official personnel folders (OPF) and records maintained by employees' managers will be maintained in accordance with applicable law, rule, and regulations. This includes timely purging of records in accordance with applicable law, rule, and regulation.

B. The following are procedures for employee access to OPF and other personnel files:

1. Prior to the Employer's implementation of eOPF, official personnel documents or other records will be provided to an employee within seven (7) business days of a written request unless the OPF is not available for reasons beyond the Employer's control.

2. Upon implementation of eOPF, the employee will have on-demand access to view and print personnel documents.
3. When personnel records are not available, the employee will be apprised of the approximate time that the documents will be available.
4. If access to the information is delayed, NTEU may request an extension of time to file a grievance or to submit an oral or written reply in the case of a disciplinary, adverse, within-grade, or unacceptable performance action. Reasonable extensions requested as a result of a delay described above will be granted by the Employer.

Section 4
No Personal or Unofficial Personnel Files

Managers or other representatives of the Employer may not maintain personal files on employees outside of the official personnel folder unless the files are properly declared under the Privacy Act, with the exception of personal notes to be used solely as "memory joggers" not to be disseminated to other managers unless it is necessary for the purpose of addressing misconduct or performance actions. Memory joggers are notes prepared by the supervisor for the purpose of making a record regarding an employee's performance and/or conduct and are not shared with the employee. Any material that the Employer intends to place in the employee's personnel file maintained within HRB (*e.g.*, leave restrictions, letters of counseling, or similar) must be shown to the employee prior to placement in the file, and the employee must be given an opportunity to copy such material for his or her own records. Each employee has electronic access to his or her official personnel file and receives notice when material is placed into his or her official personnel file.

ARTICLE 29: VACANT OFFICES

Section 1
General

A. Subject to the Employer's determination that a specific office space is available, employees will have the opportunity to move to a vacant office that becomes available within their Division. In the absence of a mission-related need (*e.g.*, physical proximity of a business unit or organizational efficiency), the most senior employee (defined as highest graded bargaining-unit employee with the earliest CFTC service computation date) will be offered the vacant office. If two (2) employees have the same CFTC service computation date, then the earliest federal service computation date will be used to establish seniority.

B. Office moves will be scheduled in the interest of keeping costs to a minimum. Employees will be given reasonable duty time to move items from their old office to their new office. The Employer will move computers, telephones, and similar electronic devices as necessary. Subject to the availability of services, employee personal effects will also be moved.

C. A vacant office that is earmarked for a specific grade level position may be offered to a lower graded employee on a temporary basis. The employee will be required to vacate the office upon identification by the Employer of an employee at the grade level for which the office was originally designated. Such employees will be given reasonable advance notice of the need to move and reasonable duty time to move from one (1) office to the other. The Employer will move computers, telephones, and similar electronic devices as necessary.

ARTICLE 30: HEALTH AND SAFETY

Section 1
OSHA

The Employer will provide and maintain safe working conditions for all employees in accordance with the Occupational Safety and Health Act (OSHA) (29 U.S.C. Chapter 15) and implementing regulations, and other applicable laws, rules, and regulations.

Section 2
General

A. In accordance with applicable laws, rules, and regulations regarding health and safety, the Employer will:

1. Assure compliance with all applicable OSHA standards, implementing regulations, and related rules and regulations;
2. Investigate reports of unhealthy or unsafe working conditions by employees and Chapter officials in accordance with CFTC policy;
3. Provide health and safety training for employees at least annually;
4. Conduct health and safety inspections of each of the Employer's facilities at least annually and provide the Union with the final results; and
5. In accordance with CFTC's mail policy, ensure the safe handling of CFTC mail and mail handling equipment.

B. NTEU agrees to promptly notify the Employer of any safety and health concerns or possible compliance problems. NTEU maintains its right to directly contact appropriate public officials and organizations (*e.g.*, OSHA) provided that NTEU:

1. Does not interfere with the Employer's efforts to correct any known health and safety concern; and
2. NTEU promptly provides the Employer all of the same information it provided to the aforementioned public officials and organizations, including the identity of such officials or point of contact at such organizations.

C. The Union may request an additional health and/or safety inspection of an office. If the Employer decides to conduct the inspection, the Employer will bear the costs and expenses, if any. If the Employer denies the Union's request, a reason will be provided in writing.

D. On an annual basis, the Employer will conduct mandatory Occupant Emergency Procedures (OEP) training on subjects addressed therein. The Employer will also periodically conduct unannounced drills/exercises in accordance with existing Occupant Emergency Plans (OEPs) at each of the Employer's facilities.

E. Emergency floor maps will be located in the elevator bays on all floors (except the first floor and Mall level at the CFTC headquarters building in Washington, DC) and in two (2) locations per floor in all regional CFTC facilities. Procedures governing the emergency evacuation or shelter-in-place of all staff, including those with special medical needs or disabling conditions (*e.g*., deaf, hard of hearing, and visually impaired employees), are contained in the OEPs for each CFTC facility/location and will be discussed in the annual training (*see* Section 2.D of this Article).

Section 3
Health Insurance

A. The Employer will furnish to each employee a link to the following information via e-mail:

1. Open Season Instructions;
2. Information to Consider in Choosing a Health Plan; and
3. Bi-weekly Health Benefits Rates.

Section 4
Unsafe Workspaces

A. An employee should notify the Employer of any health and safety concerns observed in the workplace.

B. An employee will notify the Employer by the most expeditious means available of situations at the employee's workplace where there appears to be imminent danger. The term "imminent danger" means any conditions or practices in any of the Employer's facilities that could reasonably be expected to cause death or serious physical harm immediately or within such a short time that emergency steps must be taken. In such a situation, the employee will remove himself or herself from the dangerous location or cease to perform the dangerous task as directed by the Employer. If the situation does not allow for prior notification to the Employer, the employee should remove himself or herself from the dangerous location or cease to perform the dangerous task, notify the Employer as soon as possible, and make himself or herself available for work as reasonably directed by the Employer.

C. If the Employer or another federal agency with appropriate jurisdiction determines there are significant unhealthy or unsafe working conditions present at a facility or an employee's regular workstation for 14 calendar days or longer such that employees are precluded from reporting to work at that facility/regular workstation, the Employer and the Union shall commence bargaining regarding temporary working arrangements as soon as practicable. The Employer may direct employees to report to a temporary worksite and may require employees who have a Telework Agreement to telework while bargaining is ongoing. Absent unusual circumstances, such relocation shall not affect employees' regular work schedules or telework locations. The Parties agree to suspend those provisions of this Agreement that would impede

the Employer's ability to assign employees to a new work location or require telework-ready employees to telework. The Employer will grant excused absence to affected employees in appropriate circumstances, including when the Employer or the employee is unable to provide an Alternative Worksite and the employee does not participate in the telework program in Article 11 of this Agreement (Telework).

Section 5
On-the-Job Injury

When the Employer is informed that an employee has sustained an "on-the-job" injury, the Employer will inform the employee of the procedures for filing a claim for benefits under the Federal Employees Compensation Act. The employee must report the injury to the Employer (*e.g.*, supervisor, HRB, etc.) and the Employer will provide the employee access to all necessary forms. If, because of his or her injury, the employee is unable to complete the necessary forms, the Employer will provide appropriate assistance.

Section 6
Minor Condition Treatment and CPR Training

A. The Employer will provide employees with access to a health facility for the treatment of minor injuries and conditions near their workplaces. However, employees who experience emergency or life-threatening conditions should contact 911 immediately.

B. The Employer will offer cardiopulmonary resuscitation (CPR) and first aid training, including retraining, to employees if the scheduling of such training does not conflict with the Employer's staffing, workload, and mission accomplishment and is within budgetary constraints.

C. The Employer will post the names of those employees who are trained in CPR techniques and who are willing to have their names published. No employee, however, will be required to provide CPR or first aid assistance.

D. The Employer will ensure that there are readily available AEDs (automated external defibrillators) at each worksite, and that the employees trained in CPR pursuant to Section 6.C of this Article are also trained in how to administer the AEDs.

Section 7
Screenings

Subject to budgetary constraints, the Employer will continue to arrange for or to provide flu shots and certain health services on an annual basis, including, but not limited to, those health services currently provided.

Section 8
Hazardous Chemicals

A. The Employer will, within 30 days of the effective date of this Agreement, provide the Union with a list of OSHA toxic and hazardous substances that are used ordinarily in its leased space and will request a similar list of hazardous chemicals that are used by the lessor in CFTC-leased space in accordance with applicable OSHA regulations. The Employer will promptly notify the Union of additions to this list.

B. To the extent possible, the Employer will notify the Union and affected employees at least 48 hours before OSHA toxic and hazardous substances are to be used by the lessor in CFTC leased space. In order to facilitate notification, the Employer will request of the lessor to be notified as soon as possible before hazardous chemicals are to be used in CFTC leased space.

Section 9
Travel or Temporary Duty Station

A. If an employee is injured while in travel status or at a temporary duty station, the employee should report the incident to the Employer at her or his earliest convenience. Upon such notice, the Employer will, to the extent reasonable under the circumstances, take the following action:

1. Assist the employee in obtaining immediate medical assistance;
2. Assist the employee in obtaining transportation to the nearest medical facility;
3. Approve sick leave and per diem in accordance with applicable laws, rules, and regulations; and
4. To the extent that the employee is incapacitated or specifically requests/consents, contact the employee's designated emergency contact.

Section 10
Employee Assistance Program (EAP)

A. The Employer will offer an employee assistance program (EAP), cost-free to employees, to provide employees an opportunity to overcome problems such as alcohol and drug abuse, work and family pressures, and job stress, which can adversely affect performance, conduct, reliability, and personal health. The Employer will consider whether participation in EAP services is a mitigating factor in any disciplinary or adverse actions, but it shall have no bearing on the Employer's right to consider initiating performance, disciplinary, or adverse actions against the EAP participant.

B. An employee with job performance problems who is offered EAP services bears the responsibility for returning his or her performance to an acceptable level and maintaining it at that level regardless of whether he or she uses the EAP. An employee with conduct or reliability

issues who is offered EAP services bears the responsibility for similarly resolving his or her issues regardless of whether he or she uses the EAP.

C. When using EAP services, an employee's privacy is protected by confidentiality laws and regulations and by professional ethical standards for counselors. Consistent with these laws, regulations, and standards, the details of an employee's discussions with a counselor are not released, absent an express requirement by law or regulation which requires such release, including to the Employer, without the employee's written consent. The employee will request approval from his or her supervisor to meet with an EAP counselor during duty time. Generally, the Employer will grant such requests for up to two (2) hours. If the employee seeks additional time to meet for EAP purposes, she or she may request sick leave to do so. However, under extraordinary circumstances, the Employer may ask the employee to schedule the meeting at a different time. The Employer and any other party involved will treat requests for meetings with EAP counselors as confidential.

D. An employee having a problem covered by the EAP program shall be assured that a mere request for EAP services will not jeopardize his or her job rights or job security.

E. When an Employer conducting an interview or counseling session with an employee perceives that the employee appears to be experiencing problems covered in this Section 10 of this Article, the Employer should focus on the employee's work performance or conduct related problems and may refer the employee to available EAP counseling.

Section 11
Fitness Programs and Facilities

A. During orientation, the Employer will inform new employees of the availability, if any, of gym/fitness facilities.

B. Subject to budgetary constraints and space limitations, and as provided by the lease at each respective CFTC facility, the Employer will continue to provide the fitness center services currently offered.

Section 12
Equipment

The Employer will provide appropriate equipment through the reasonable accommodation process in Article 26 of this Agreement (Reasonable Accommodation).

Section 13
Nursing Mothers

The Employer will allow employees to use their private offices for lactation purposes. Where an employee does not have access to a private office, the Employer will make available appropriate private space with a working lock suitable for use by nursing mothers. Employees will have access to refrigerators on each floor. The Employer will accommodate reasonable requests to schedule unpaid breaks during the work day as necessary for lactation-related purposes.

ARTICLE 31: ANTI-RETALIATION AND WHISTLEBLOWER PROTECTION

Section 1
General

A. The Whistleblower Protection Act of 1989 and the Whistleblower Protection Enhancement Act of 2012 provide the right for all covered federal employees to make whistleblower disclosures and ensure that employees are protected from whistleblower retaliation. Whistleblowing is defined as the disclosure of information that an employee reasonably believes evidences: a violation of any law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; a substantial and specific danger to public health or safety; or censorship related to scientific research or analysis.

B. Employees have the right to be free from prohibited personnel practices, including retaliation for whistleblowing, and may make lawful disclosures to anyone, including, for example, management officials, the Inspector General of an agency, and/or the U.S. Office of Special Counsel.

ARTICLE 32: ATTIRE

The Employer's business casual dress policy, dated January 7, 2008, is incorporated herein and will continue. If the policy is changed, it must be substantively negotiated pursuant to Article 6 of this Agreement (Midterm Bargaining).

ARTICLE 33: ANNUAL LEAVE

Section 1
Accrual and Use of Annual Leave

Employees will earn and use annual leave in accordance with applicable laws, rules, regulations, and this Article. Employees may utilize annual leave in 15 minute increments and must record annual leave usage in the Employer's electronic time and attendance system. Annual leave may be informally requested verbally (by telephone or in person), by email, or by text message, but the request must subsequently be recorded in the electronic time and attendance system. Employees must request annual leave and may not be charged annual leave without consent.

Section 2
Request for Annual Leave

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

B. The supervisor shall respond to the request for annual leave within three (3) work days, unless the advance notice is less than three (3) work days, in which case the response will be given to the employee as soon as practicable.

C. An employee who wishes to take pre-planned annual leave for more than three (3) days shall normally request the annual leave one (1) calendar week in advance.

D. The Employer may approve a request for annual leave that has not been made in advance. When requesting unscheduled leave for a full day, the employee should request his or her supervisor's approval of the annual leave by the beginning of core hours.

E. Employees shall record the leave request in the electronic time and attendance system by the end of the pay period in which it is taken.

Section 3
Use or Lose Annual Leave

In October of each year, the Employer will issue an annual memorandum to all employees advising them of the regulations concerning "use or lose" annual leave to include the possibility of forfeiture. Consistent with 5 U.S.C. § 6304 and the annual memorandum, employees may have forfeited annual leave restored at the end of the leave year if the annual leave was approved and was scheduled in advance and the employee was prevented from using the leave due to exigency of the public business or sickness. Forfeited annual leave may also be restored due to administrative error that results in annual leave being forfeited through no fault of the employee.

Section 4
Advanced Annual Leave

When an employee's annual leave balance has been exhausted, the Employer will approve advanced annual leave requests consistent with 5 U.S.C. § 6302(d). The Employer may advance annual leave to an employee in an amount not to exceed the amount the employee would accrue within the leave year.

Section 5
Sick Leave in Lieu of Annual Leave

An employee may submit a request to change previously approved annual leave to sick leave where sick leave is appropriate. The Employer's decision regarding an employee's request will be governed by relevant provisions of Article 34 of this Agreement (Sick Leave).

Section 6
Cancellation of Annual Leave

The Employer will not cancel previously approved annual leave unless (1) circumstances exist that were not foreseen or could not reasonably have been foreseen at the time approval was given, and (2) the employee's absence would have a significant adverse effect on staffing, workload, or mission requirements. Examples of unforeseen circumstances under this Section 6 of this Article include, but are not limited to: unavailability of staff due to illness, emergency, resignation, or similar; or unanticipated change in work requirements including new time sensitive projects. When an approved leave request is cancelled, the employer will provide an explanation of the reason for cancellation in writing. An employee may also cancel previously approved annual leave.

Section 7
Leave Restriction

If the Employer determines that an employee has exhibited a pattern of failure to comply with the procedures set forth in this Article for requesting annual leave or is otherwise exhibiting a pattern of abuse of annual leave, the Employer may notify the employee in writing that subsequent annual leave requests may not be approved unless the employee confirms approval of annual leave in advance. This notice will include the basis for imposing this requirement and will specify the length of time during which the requirement will be in place. Normally, such requirement will be in place for no more than six (6) months. At the end of the stated period, the Employer may terminate or renew the requirement, depending on the employee's compliance with the procedures for requesting annual leave during this period. The Employer's decision will be in writing.

ARTICLE 34: SICK LEAVE

Section 1
Accrual and Use of Sick Leave

A. Employees will earn and use sick leave in accordance with applicable laws, rules, regulations, and this Article. Employees may utilize sick leave in 15 minute increments and must record sick leave usage in the Employer's electronic time and attendance system. Sick leave may be informally requested verbally (by telephone or in person), by email, or by text message, but the request must normally be recorded in the electronic time and attendance system by the end of the pay period in which the leave is taken. Employees must request sick leave and may not be charged sick leave without consent.

B. An approved absence which would otherwise be chargeable to sick leave may be chargeable to earned compensatory time, compensatory time for travel, or award leave at the option of the employee, or to non-FMLA Leave Without Pay (LWOP) at the request of the employee and approval by the Employer.

C. When an employee requests LWOP for sick leave purposes, the request is subject to the provisions of this Article.

Section 2
Eligibility and Definitions

A. The Employer will grant accrued sick leave to an employee when the employee:

1. Receives medical, dental, or optical examination or treatment;
2. Is incapacitated for the performance of his or her duties because of physical or mental illness, injury, pregnancy, or childbirth;
3. Provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment;
4. Provides care for a family member with a serious health condition;
5. Makes arrangements necessitated by the death of a family member or attends the funeral of a family member;
6. Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease; or
7. Must be absent from duty for purposes related 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.

B. For purposes of this Article, a family member is defined as:

1. The employee's spouse, and parents thereof;
2. The employee's children, and spouses thereof;
3. The employee's parents, and spouses thereof;
4. The employee's brothers and sisters, and spouses thereof;
5. The employee's grandparents and grandchildren, and spouses thereof;
6. The employee's domestic partner and parents thereof, including domestic partners of any individual listed in this section 2.B of this Article; and
7. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

C. For purposes of this Article, a serious health condition shall have the meaning set forth in 5 C.F.R. § 630.1202.

Section 3
Approval for Use of Sick Leave

A. An employee will request his or her supervisor's approval of the use of pre-planned sick leave reasonably in advance of the requested leave.

B. When the employee is unable to report to work, absent exigent circumstances, the employee must request his or her supervisor's approval of the unscheduled sick leave prior to the beginning of core hours.

Section 4
Documentation of Illness

A. The Employer may grant sick leave only when the need for sick leave is supported by administratively acceptable evidence. The Employer may consider an employee's self-certification as to the reason for his or her absence as administratively acceptable evidence, regardless of the duration of the absence. The Employer may also require a medical certificate or other administratively acceptable evidence as to the reason for an absence for any of the purposes described in 5 C.F.R. § 630.401(a) for an absence in excess of three (3) workdays or for a lesser period when the Employer determines it is necessary in accordance with the provisions of this Article.

B. For infrequent absences of short duration (generally three (3) consecutive workdays or less) due to illness or injury, an employee's oral self-certification normally will be acceptable evidence of incapacitation. However, where the Employer reasonably believes the employee may be engaged in leave abuse, such as a pattern of taking particular days off for sick leave, the Employer may require a medical certificate.

C. The employee's supervisor may decline to approve sick leave until the requested medical certificate or other administratively acceptable evidence is provided. If it is not practicable under the particular circumstances to provide the requested evidence or medical certification within 15 calendar days after the date requested by the Employer despite the employee's diligent, good faith efforts, the employee must provide the evidence or medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the Employer requests such documentation. An employee who does not provide the required evidence or medical certification within the specified time period is not entitled to sick leave and may be placed in an AWOL status; however, the Employer may also consider a request for annual leave or LWOP in lieu of the sick leave request.

D. If a medical certificate in the form of a signed letter or note from the health care provider is required under this provision, it will include the following:

1. Any actual date(s) seen by the health care provider;
2. Probable duration of incapacity and return to work date;
3. An affirmative statement by the health care provider that the employee is unable to work during the period of incapacity; and
4. The employee's name, the health care provider's name and address, and the signature of the health care provider.

E. A medical certificate will not normally be required to include any specific information about the nature of the employee's condition, including diagnosis or prognosis. However, additional medical documentation of this nature may be required:

1. When necessary for the Employer to exercise reasonable judgment as to whether to grant the employee's request (*e.g.*, to evaluate requests for reasonable accommodation, FMLA leave, or extended sick leave); and/or
2. When necessary for the Employer to direct or to obtain clearance for an employee to return to work and/or to ensure the safety of the work place. In these instances, documentation may be requested for absences of three (3) days or less.

F. Where a medical diagnosis and prognosis is necessary, any determination regarding the medical information set forth in such documentation may only be made by a qualified health care provider. Where necessary, and consistent with law and regulation, the Employer will determine whether the appropriate documentation submitted is sufficient to reasonably exercise its judgement to approve or deny the request.

G. Any medical documentation or evidence submitted by an employee shall be considered confidential and may only be discussed with other officials of the Employer subject to its Privacy Act obligations and any other applicable laws, and only for work related reasons on a need to know basis.

H. An employee with a chronic or continuing condition may be asked to provide a medical certificate evidencing the condition periodically if the original certificate does not specify the

expected duration of the employee's condition and the anticipated length of the employee's incapacitation.

I. Sick leave records will not be made public and will be kept confidential.

Section 5
Advanced Sick Leave

A. When an employee's sick leave balance has been exhausted, the Employer may grant a written request for advanced sick leave when required by the exigencies of the situation and for the same reasons it grants sick leave to an employee, subject to the limitations below. The Employer may advance up to 240 hours (30 days) of sick leave to a full-time employee:

1. Who is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth;
2. For a serious health condition of the employee or a family member;
3. When the 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;
4. For purposes relating to the adoption of a child; or
5. For the care of a covered service member with a serious injury or illness, provided the employee is exercising his or her entitlement to FMLA leave to care for a covered service member.

B. The Employer may advance up to 104 hours (13 days) of sick leave to a full-time employee:

1. For the medical, dental, or optical examination or treatment of a family member;
2. To provide care for a family member who is incapacitated by a medical or mental condition or to attend to a family member receiving medical, dental, or optical examination or treatment;
3. To provide care for a family member who would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease; or
4. To make arrangements necessitated by the death of a family member or to attend the funeral of a family member.

C. The Employer may advance sick leave for any lawful purpose when all of the following conditions are met:

1. The employee has provided a medical certificate or other administratively acceptable evidence of the need for sick leave;
2. Repayment can reasonably be expected;
3. The employee's request does not exceed 30 business days or 240 hours;

4. There is no reason to believe the employee will not return to work and continue employment after having used the leave; and,
5. The employee is not currently under a leave warning or leave restriction.

D. Advanced sick leave need not be taken on consecutive days.

Section 6
Bereavement and Funeral Leave

A. Sick Leave for Bereavement. An employee is entitled to use sick leave to make arrangements necessitated by the death of a family member or attend the funeral of a family member. The use of sick leave for bereavement purposes is subject to the limitations in Section 12 of this Article.

B. Military Funeral Leave. Employees are eligible for funeral leave when an immediate relative dies while serving as a member of the Armed Forces in a combat zone. For more information on this entitlement, please see Article 36 of this Agreement (Excused Absence).

Section 7
Leave Restriction

The Employer may place restrictions on the employee's use of sick leave if it determines that there has been inappropriate use of sick leave. The Employer will consider counseling the employee that such restrictions may be imposed if the identified abuse continues. An employee subsequently placed on sick leave restrictions will be notified of the restrictions in writing. This notice will include the basis for imposing the restrictions and will specify the length of time during which the restrictions will be in place. Normally, such leave restrictions will be in place for no more than six (6) months. At the end of the stated period, the Employer may terminate or renew the restrictions, depending on the employee's use of leave during the leave restriction period and on other specific facts and circumstances. The Employer's decision will be in writing.

Section 8
Substitution of Leave

When illness occurs within a period of annual leave, sick leave may be granted upon the employee's request and approval by the supervisor for the period of the illness.

Section 9
Sick Leave Not Relevant to Performance Appraisal

The Employer will not consider the use of approved sick leave as a negative factor in preparing the employee's written performance appraisal.

Section 10
Leave Bank

The Employer and Union will, in consultation, discuss the possibility of creating a leave bank. HRB will report its assessment to the Chairman and to the Union within six (6) months of the effective date of this Agreement.

Section 11
Voluntary Leave Transfer Program (VLTP)

The VLTP allows a CFTC employee to transfer annual leave directly to another employee who has insufficient annual or sick leave to cover a period of absence due to the employee's own medical emergency or that of a family member.

A. Definitions.

1. Leave donor: an employee whose voluntary written request for transfer of annual leave to the annual leave account of a leave recipient is approved by his or her own employing agency.
2. Leave recipient: a current employee for whom the employing agency has approved an application to receive annual leave from the annual leave accounts of one (1) or more leave donors.
3. Medical emergency: a medical condition of an employee or a family member of such employee that is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.
4. Family member: as defined in Section 2.B of this Article.

B. Eligibility. Any Employee may apply to become a leave recipient under this Article. To be accepted into the VLTP program, the prospective leave recipient must meet the following conditions:

1. Have a medical emergency or assist in the care of a family member experiencing a medical emergency; and
2. Be, or anticipate being, absent from duty without available annual and sick leave because of the medical emergency for at least 24 work hours (or, for a part-time Employee, at least 30% of the average number of hours of work in the Employee's bi-weekly tour of duty). For an Employee's personal medical emergency, he or she must have exhausted all accrued or accumulated annual and sick leave before

receiving any transferred leave. For a family member's medical emergency, the Employee must have exhausted all accrued or accumulated annual leave and the applicable amount of sick leave allowed for the care of a family member, as defined in 5 C.F.R. § 630.401, before receiving any transferred leave.

C. Submitting Request for Leave Transfer. To be eligible for leave transfer, an employee must submit a Leave Recipient Application, CFTC Form 630, to the Chief of Workforce Relations. The application must include:

1. The name, position, title, grade, and salary of the applicant; and
2. The reasons why transferred leave is needed, including a brief description of the medical emergency and, if it is a recurring one, the approximate frequency of the medical emergency.

D. Review of Application to Become a Leave Recipient. The Chief of Workforce Relations, or her or his designee, will review applications to become a leave recipient to determine:

1. Whether the applicant has been affected by a medical emergency; and
2. Whether the resulting absence from duty without available paid leave has been, or is expected to be, at least 24 hours.

E. Employee Notification. The Chief of Workforce Relations, or his or her designee, will notify the applicant within 10 calendar days after the application is received whether the application is approved. If the application was made on behalf of the prospective leave recipient by another CFTC employee, a copy of the notification will also be sent to that employee.

1. If the application is approved, the notification will inform the leave recipient that other CFTC employees may transfer annual leave to the recipient's leave account.
2. If the application is not approved, the notification will state the reasons for the disapproval.

F. Making Donations to Approved Leave Recipients. At the leave recipient's request, a CFTC Communication will be sent out to solicit annual leave donations from other CFTC employees. Solicitations will include a general description of the employee's emergency (as provided by the employee) and may or may not include the employee's name as the employee requests.

1. A CFTC employee may submit a written request to HRB that a specified amount of accrued leave be transferred from his or her annual leave account to the annual leave account of a specified leave recipient. The request must be made on CFTC Form 26, Leave Donation Application (Appendix G).
2. It is expected that most leave donations will be made to co-workers at CFTC. However, donations may be made to and from employees in other agencies, if the amount of annual leave transferred from the leave donors employed by CFTC is not sufficient to meet the needs of the leave recipient or acceptance of leave donated from another agency would further the purpose of the transfer program.
3. The following procedures will apply to interagency donations:

(a) Before processing a leave donation from an employee of another agency to a CFTC employee, HRB must obtain verification that the donor's employing agency has approved the donation.
(b) Donations are considered to have been approved by the donor's agency when the donor's payroll office certifies in writing that the donated leave has been deducted from the donor's leave account.
(c) CFTC employees who want to donate leave to employees of other agencies should complete CFTC Form 26 and submit it to HRB, which will deduct the donated leave from the donor's leave account.

G. Limitations on the Amount of Leave Which May Be Donated. Only annual leave which an employee has already earned may be donated. In any leave year, an employee may donate a total of not more than one-half of the annual leave he or she is entitled to accrue during the leave year in which the donation is made.

1. The total amount of leave that may be donated during the leave year by a leave donor who is projected to have use or lose leave should be the lesser of:
   (a) One-half of the amount of annual leave the employee would be entitled to accrue during the leave year in which the donation is made; or
   (b) The number of hours remaining in the leave year that the leave donor is scheduled to work and receive pay.
2. The Director of HRB may waive the limitations on donating annual leave in unusual circumstances.

H. Accrual of Annual and Sick Leave. The maximum amount of annual leave and sick leave that may be accrued by an employee while in a transferred leave status in connection with any particular medical emergency may not exceed 40 hours annual leave and 40 hours sick leave.

1. Annual leave and sick leave that an employee accrues in a transferred leave status will be credited to a separate leave account.
2. The employee will be credited with the accrued annual leave and sick leave at the beginning of the first pay period after the employee's medical emergency terminates or, if the employee's medical emergency has not yet terminated, once the employee has exhausted all annual and sick leave.
3. If the leave recipient's employment is terminated, accrued annual leave and sick leave will not be credited to the employee.

I. Use of Donated Annual Leave. Annual leave used by leave recipients under the program must be used only for the purpose of the medical emergency for which the leave recipient was approved.

1. Accrued annual leave must be used before donated leave may be used.
2. If the nature of the medical emergency is such that absence from work appropriately may be charged to sick leave, accrued sick leave must be used before the donated leave may be used.

3. Only when all such available annual leave (and sick leave, if appropriate) has been exhausted will any remaining absence be charged to donated annual leave.
4. The use of donated leave is subject to the limit on the amount of the annual leave that may be carried over from one (1) leave year to the next; for most employees, that limit is 240 hours; for CT-16, 17, and 18 employees, 480 hours is the limit; for former SES members, the higher of 720 hours or their personal leave ceiling is the limit.
5. Any donated leave that is restored to the donor more than three (3) full pay periods from the end of the leave year is subject to the donor's leave ceiling.
6. Donated leave may not be:
   (a) Transferred to any supervisor within the employee's chain of command;
   (b) Transferred to another leave recipient under the leave transfer program, except as provided in Section 11.K.3 of this Article:
   (c) Transferred to another federal agency in the event that the leave recipient voluntarily transfers to another agency;
   (d) Included in a lump-sum payment upon the recipient's separation from government employment or entry on active military duty; or
   (e) Recredited under the provisions of 5 U.S.C. § 6306 upon reemployment by another federal agency.

J. Termination of the Medical Emergency. When the medical emergency terminates, no further requests to transfer leave to the leave recipient may be granted and no further requests to use transferred leave may be approved or charged against the transferred leave account.

1. HRB will notify the timekeeper of the termination of the medical emergency. Any unused transferred annual leave remaining to the credit of the leave recipient will be restored to the leave donors as specified in Section I of this Article.
2. The medical emergency affecting a leave recipient is considered terminated:
   (a) When the leave recipient's employment with CFTC is terminated;
   (b) When the leave recipient is placed in a CFTC position which is not under the annual leave system;
   (c) At the end of the pay period in which CFTC determines, after written notice from the Employer and an opportunity for the leave recipient (or, if appropriate, a personal representative of the leave recipient) to answer orally or in writing that the leave recipient is no longer affected by the medical emergency;
   (d) At the end of the pay period in which CFTC receives notification that OPM has approved an application for the disability retirement for the leave recipient under either the Civil Service Retirement System or the Federal Employees Retirement System.

K. Restoration of Donated Annual Leave. Donated annual leave remaining to the credit of a leave recipient when the medical emergency terminates shall be restored, to the extent administratively feasible, by transfer to the annual leave accounts of leave donors currently employed by a federal agency in a position subject to the leave system. Restoration of donated leave is not considered to be administratively feasible when the leave donor is no longer

employed by CFTC and attempts to locate him or her at a known address have failed, or when the amount of leave restorable would be less than one (1) hour.

1. The amount of leave to be restored to each donor is computed as follows:
   (a) The number of hours of unused donated leave is divided by the total number of hours of leave donated to the leave recipient by all leave donors; then,
   (b) The ratio obtained is then multiplied by the number of hours donated for each leave donor, and the result is rounded to the nearest hour (less than one-half hour is rounded down; one-half hour or more is rounded up).
2. In no case will the amount of leave restored to a donor exceed the amount donated by that donor.
3. A leave donor may request that unused transferred annual leave be credited during the current leave year, the following leave year, or the donor may donate the leave to another leave recipient.

Section 12
Sick Leave for Family Care Usage Limits per Leave Year

A. Consistent with 5 C.F.R. Part 630, employees may use up to 13 days (104 hours) of sick leave:

1. For the medical, dental, or optical examination or treatment of a family member;
2. To provide care for a family member who is incapacitated by a medical or mental condition or to attend to a family member receiving medical, dental, or optical examination or treatment;
3. To provide care for a family member who would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease; or
4. To make arrangements necessitated by the death of a family member or to attend the funeral of a family member.

B. Sick leave for adoption purposes does not count towards this 13-day limitation.

C. Employees may use up to 12 weeks (480 hours) of sick leave to care for a family member with a serious health condition each leave year. This 12-week entitlement includes the 13 days (104 hours) of sick leave for general family care or bereavement purposes. An employee is entitled to no more than a combined total of 12 weeks of sick leave each leave year for all family care purposes.

ARTICLE 35: FAMILY AND MEDICAL LEAVE ACT AND LEAVE FOR FAMILY CARE

Section 1
Leave under the Family and Medical Leave Act (FMLA) of 1993

A. An employee may request to take up to 12 administrative work weeks of unpaid leave in accordance with the Family and Medical Leave Act and implementing regulations. An employee may elect to substitute, for any unpaid leave under the FMLA, any of the available forms of paid or donated leave consistent with the applicable law, rule, and regulations governing the respective leave category.

B. An employee must, where practicable, provide notice of his or her intent to take leave under FMLA to his or her immediate supervisor at least 30 calendar days before leave is to begin.

Section 2
Maternity Leave

A. Leave for maternity reasons is a period of approved absence for pregnancy and recuperation needed after delivery. The federal government does not have a separate leave category for maternity reasons. Sick leave, annual leave, FMLA leave, and/or LWOP may be granted to cover a period of absence for maternity reasons. An employee may also participate in the Voluntary Leave Transfer Program (*see* Section 11 of Article 34 of this Agreement (Sick Leave)) for a maternity related medical emergency.

1. The employee should submit a Maternity Leave Application to request leave for maternity reasons as far in advance as practicable. In submitting such a request, the employee should provide the expected date of delivery, the anticipated period of incapacitation, the period for which leave is requested, and the type(s) of leave requested. To the extent that any of the leave requested is to be used for sick leave purposes, medical documentation consistent with the Maternity Leave Application must be provided for any absence in excess of three (3) days.
2. Where an employee chooses not to submit this information prior to taking maternity leave, the Employer may nonetheless require this information in order to approve maternity leave when requested.
3. Sick leave may only be used to cover the time required for physical examinations and to cover the period of incapacitation prior to and following delivery.

B. An employee who indicates that she does not intend to return to duty after delivery will be granted sick leave, if available, during the periods before and after delivery, if supported by her physician's certificate.

C. After delivery and recuperation, an employee may desire a period of adjustment or need time to make arrangements for the care of the child.

1. Such additional leave requirements will be considered, if requested, either in the form of annual leave, LWOP, or FMLA leave.
2. Requests for additional leave should be submitted as far in advance as possible before the expiration of the initial period of authorized leave.

Section 3
Paternity Leave

A. Sick leave , annual leave, FMLA leave, and/or LWOP may be granted to cover a period of absence for paternity reasons in accordance with the requirements set forth in this Agreement.

B. The employee should request leave for paternity reasons as far in advance as practicable.

C. Sick leave may only be used for purposes of assisting or caring for his or her minor children or the mother of his or her newborn child while she is incapacitated for maternity reasons.

1. To the extent that any of the leave requested is to be used for sick leave purposes, medical documentation equivalent to that required by the Maternity Leave Application must be provided for any absence in excess of three (3) days.
2. In submitting such a request, the employee should provide the expected date of delivery, the anticipated period that the mother will be incapacitated, the period for which leave is requested, and the type(s) of leave requested.
3. Where an employee chooses not to submit this information prior to taking paternity leave, the Employer may nonetheless require this information in order to approve paternity leave when requested at that time.

D. An employee may also participate in the Voluntary Leave Transfer Program for purposes of assisting or caring for his or her minor children or the mother of his or her newborn child while she is incapacitated for maternity reasons.

Section 4
Leave Without Pay (LWOP) for Family Support

A. In addition to eligible paid leave, the Employer will approve written requests by an employee to use leave without pay of up to 24 hours per year, per the Presidential Memorandum to Agency Heads (dated April 11, 1997) and OPM guidance:

1. School and Early Childhood Educational Activities;: to allow employees to participate in school activities directly related to the educational 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. In this

memorandum, “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 or dental appointments, such as annual checkups or vaccinations. Although these activities are not currently covered by the FMLA, employees are able to use up to 24 hours of leave without pay each year for these purposes in cases when no additional sick leave is available to employees.
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 the care of the elderly relative, such as making arrangements for housing, meals, phones, banking services, and other similar activities. Although employees can use unpaid leave or sick leave for certain of these activities under the FMLA, such as caring for a parent with a serious health condition, employees can also use up to 24 hours of unpaid time off each year for this broader range of activities related to elderly relatives’ health or care needs.

B. The Employer will approve an employee’s request for such leave unless the employee’s absence would have an adverse effect on staffing, workload, or mission requirements.

Section 5
Adoption and Foster Care

A. An employee is entitled to use FMLA leave for the placement of a son or daughter with the employee for adoption or foster care. Subject to the supervisor’s approval, FMLA leave may be used on an intermittent basis for absences in connection with adoption or foster care.

B. The entitlement to FMLA leave expires at the end of the 12-month period beginning on the date of placement. Leave for a placement must be concluded within this 12-month period. FMLA leave may begin prior to or on the date of the actual date of placement for adoption or foster care, and the 12-month period begins on that date.

C. An employee may elect to substitute annual leave and/or sick leave for any or all of the leave without pay used under the FMLA, consistent with the laws and regulations for using annual and sick leave.

ARTICLE 36: EXCUSED ABSENCES/ADMINISTRATIVE LEAVE

Section 1
General

A. For purposes of this Article, administrative leave is an excused absence from duty without loss of pay or charge to leave. Administrative leave is permitted at the Employer's discretion, but subject to statutory and regulatory requirements and the terms of this Agreement, even when the Employer determines that other paid leave may available.

B. Upon issuance of a government-wide regulation implementing the Administrative Leave Act of 2016, either Party may contact the other to identify Article(s) in this Agreement impacted by the regulation and the sections of those Article(s) that need to be updated to ensure consistency with the new government-wide regulation. Where the government-wide regulation conflicts with the existing language of this Agreement, the Parties will engage in impact and implementation bargaining to the extent required by law.

C. Where the government-wide regulation referenced in Section 1.B of this Article does not conflict with this Agreement it will be effective upon impact and implementation bargaining as required by applicable case law.

Section 2
Voting

As a general rule, when the voting polls are not open at least three (3) hours either before or after an employee's regular hours of work, such employee shall be granted an amount of administrative leave to vote that will permit the employee to report to work three (3) hours after the polls open or leave work three (3) hours before the polls close, whichever requires the lesser amount of time. If a manager refuses to allow an employee administrative time off to vote, the matter will immediately be referred to the employee's second-line manager for a determination whether the granting of administrative time off is appropriate.

Section 3
Weather Closure or Emergency Situation

A. If the Employer must close a facility because of severe weather conditions or an emergency situation as determined by OPM (for the Washington, DC office) or the Employer (for all other offices), excused absences will be granted to those employees on official duty in accordance with applicable law, regulation, and OPM guidance. The Employer will notify employees as soon as practicable regarding the CFTC's operating status.

B. Employees who telework must comply with their Telework Agreement and the terms of Article 11 of this Agreement (Telework) when the CFTC is closed due to severe weather conditions or an emergency situation.

C. In the event of an early closing of a facility, employees will be notified as promptly as possible after the decision is made that they may leave work at no charge to leave or loss of pay. The early dismissal will have no effect on the leave or pay of employees not in duty status when the dismissal became effective (*i.e.*, employees on sick leave or annual leave will not be granted excused absences, consistent with OPM guidance).

D. An "emergency employee" is an employee who has been designated, in writing, by the head of her or his office to report for work (in the office or telework) and continue critical operations during early dismissal, delayed opening, and closure days. Designated emergency employees should be notified annually of such designation.

Section 4
Blood Donation

Excused absences will be granted for up to four (4) hours for blood donation based upon an employee's advance request and consistent with workload and staffing needs. The Employer shall make reasonable efforts to release employees to donate blood. The supervisor may approve excused absence for blood donation up to five (5) times in a calendar year.

Section 5
Bone Marrow/Organ Donation

A. An employee will be granted up to seven (7) days of excused absence each calendar year to serve as a bone marrow donor. An employee will be granted up to 30 days of excused absence each calendar year to serve as an organ donor. Any excused absence provided for either bone marrow or organ donations shall be in addition to an employee's voluntary use of annual and/or sick leave. The excused absence permitted under this Section 5 of this Article will include the time required for travel, any testing to determine if the employee is a compatible donor, as well as the time required to undergo the donation or transplant procedure and to recuperate. In addition to authorized excused absences, an employee may also request annual and sick leave for these purposes.

B. To obtain such leave, the employee will provide documentation to his or her supervisor reflecting the fact that the employee has been approved to be a bone marrow or organ donor and the date(s) on which such procedure will occur.

Section 6
Court Leave

Employees shall be granted court leave when called to jury duty or when serving as a witness in a judicial proceeding in which the federal, state, or local government is a party. To avoid undue hardship, the Employer may adjust the schedule of an employee who works nights or weekends and is called to jury duty. Employees must reimburse to the CFTC fees paid for service as a juror or witness.

Section 7
Benefits Counseling

Subject to workload considerations, the Employer will grant an employee up to a total of four (4) hours excused absence per calendar year for the purposes of attending a health benefits fair, reviewing health benefits information and materials, receiving financial counseling, and seeking supplemental retirement counseling.

Section 8
Military Leave

A full-time employee who is a member of the National Guard or a reserve component of the Armed Forces shall be entitled to military leave for active duty, active duty training, and inactive duty training at the rate of 15 days per fiscal year. Military leave that is not used in a fiscal year accumulates for use in the succeeding fiscal year. However, no more than 15 days may be carried over into the succeeding fiscal year. The total maximum accumulation for military leave is 30 days in any fiscal year.

Section 9
Military Funeral Leave

A. An employee is entitled to up to three (3) workdays of excused absence to make arrangements for or to attend the funeral of an immediate relative who died as a result of wounds, disease, or injury incurred while serving as a member of the Armed Forces in a combat zone. If the employee provides satisfactory reasons, the three (3) workdays are not required to be consecutive.

B. When an employee requests funeral leave for a combat-related death of an immediate relative, the Employer may require the employee to document his or her relationship to that immediate relative. The Employer will endeavor to establish consistent rules and follow the same documentation requirements for all relationships, but the Employer has the authority to request additional information in cases of suspected leave abuse.

Section 10
Religious Observances

A. In accordance with law and implementing regulations, an employee whose personal religious beliefs require the abstention from work during certain periods of time will be permitted to work compensatory time consistent with workload and staffing requirements.

B. The scheduling of religious compensatory time is subject to supervisory approval. Where possible, such requests must be made at least 30 days in advance of the date of the observance or the proposed compensatory work schedule, whichever is earlier. Time taken off in advance must be re-paid within 13 pay periods following the pay period in which the employee was absent. For the employee who earns compensatory time off before using it, religious compensatory time off may be earned up to 13 pay periods in advance of the pay period in which the religious observance commences. An employee who requests compensatory time off for religious observances will submit the following information in writing to the maximum extent practicable and complete a request in the Employer's electronic system for reporting time and attendance:

1. The name and/or description of the religious observance that is the basis of the employee's request to be absent from work in order to meet the employee's personal religious requirements;
2. The date(s) and time(s) the employee plans to be absent to participate in the religious observances identified in this Section B.1 of this Article; and
3. The date(s) and time(s) the employee plans to perform overtime work to earn religious compensatory time off to make up for the absence.

C. If the employee is unable to submit a request in writing in accordance with this Section 10.B of this Article, an oral request will be accepted initially provided that the details required in this Section 10.B of this Article are also provided orally. The employee will be required to submit a written request as soon as practicable thereafter.

D. The Employer must approve an employee's request to use religious compensatory time off unless the Employer determines that approving the request would interfere with the CFTC's ability to efficiently carry out its mission. If the employee's request to use religious compensatory time off is denied, the Employer must provide a written explanation as to the reason the request has been denied.

E. The hours worked in lieu of the employee's normal work schedule must occur within the available flexible time bands (start and stop) as described in Article 7 of this Agreement (Work Schedules). Time taken off in advance must be repaid within 13 pay periods following the pay period in which the employee was absent; otherwise, the time will be charged to another personal leave category or leave without pay as appropriate.

F. When the compensatory time work is performed in advance, the time for religious observance must be taken within 13 pay periods following the pay period in which it was earned;

otherwise, it will be forfeited. If an employee is absent when he or she is scheduled to perform compensatory time work, then the employee must take annual leave, request leave without pay, or, if appropriate, sick leave or be charged absence without leave.

G. The overtime pay provisions of Title 5, United States Code, and the Fair Labor Standards Act of 1938, as amended, do not apply to employees who work different hours or days because of religious observances, even if an employee voluntarily works in excess of 40 hours per week or eight (8) hours per day for this purpose. If an employee is separated or transferred before using the time set aside for religious observances, any hours not used must be paid at the employees' rate of basic pay in effect when the extra hours of work were performed. Religious compensatory time off is not considered in applying the premium pay limitations described in 5 C.F.R. §§ 550.105, 550.106, and 550.107.

H. The Parties have negotiated this Article consistent with OPM's final rule concerning compensatory time off for religious observances, 5 C.F.R. § 1001 *et seq*. In so doing, this Article shall be interpreted consistent with applicable government-wide regulations. Any additional modifications to compensatory time off for religious observances from OPM's final rule will result in a duty to bargain as required by law.

ARTICLE 37: LEAVE WITHOUT PAY

Section 1
General

A. Leave without pay (LWOP) is absence from duty in an approved non-pay status that may be granted at the employee's request. LWOP is distinguished from absence without leave (AWOL), which is an absence from duty that is not authorized or approved.

B. LWOP may be used in 15-minute increments.

C. LWOP may be granted even if an employee has accumulated leave available.

Section 2
Entitlement to LWOP

A. Employees are entitled to LWOP as a matter of right under the following circumstances:
1. Disabled veterans requiring medical treatment pursuant to Executive Order 5396;
2. Absence because of service in the uniformed services pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994;
3. For the first year during which an employee is receiving workers' compensation payments from the U.S. Department of Labor pursuant to 5 U.S.C. Chapter 81 (after the first year, the provisions of 5 U.S.C. § 8151(b)(2) apply); and
4. Employees entitled to LWOP under the FMLA.

Section 3
Short Term (up to 30 days) LWOP

Supervisors may grant LWOP not to exceed 30 consecutive days in any calendar year. Requests for short-term LWOP should be submitted through the Employer's electronic time and attendance system and will be evaluated consistent with workload and staffing needs.

Section 4
Extended (in excess of 30 days) LWOP

A. A request for LWOP in excess of 30 days must be submitted with the supervisor's recommendation to the Director of HRB. Upon approval by the Director of HRB or his or her designee, the request will be documented with a Standard Form 50, Notification of Personnel Action. Employees are encouraged to consult with HRB regarding possible effects of extended LWOP on federal benefits and programs.

B. When reviewing requests for extended LWOP, the approving official should ensure that the benefit to the CFTC and the government, or the needs of the employee, are sufficient to

offset the costs and administrative inconvenience of retaining an employee in a LWOP status. Matters to be considered may include loss of services that may be needed in the organization and the CFTC's interest in providing employment at the end of the approved absence. When granting extended LWOP, the approving official should have a reasonable expectation that the employee will return to duty at the end of the LWOP and that at least one of the following benefits would result: (1) for employees who are not eligible for FMLA, to allow employees to address their own or a family member's documented health issue; (2) retention of a desirable employee; (3) increased ability to perform the job because of specific training or education; or (4) furtherance of a CFTC or government goal.

C. When an employee who is not eligible for FMLA requests extended LWOP based on a medical condition, the LWOP will be granted in increments of 90 days or less, up to a total of 52 weeks.

1. To request extended LWOP based on a medical condition, the employee must submit a doctor's note including a general description of the medical condition and an approximate date the employee will likely be able to return to work. The Employer may request additional documentation or clarification if the lack of that additional information would keep the request from being granted. All medical information will be kept confidential.
2. Decisions regarding LWOP based on a medical condition are made on a case-by-case basis and are based on work constraints, office coverage, impact on co-workers, and employees' medical requirements or personal needs. The decision will be upheld unless it is arbitrary and capricious.

D. At the conclusion of the LWOP, or when an extension is denied, the employee must return to the Official Duty Station as directed by the Employer.

E. LWOP may be granted for periods of up to and not to exceed 52 weeks based on the employee's specific circumstances. With the exception of requests for FMLA, once the 52 week allowance is exhausted, the employee will not be eligible for extended LWOP for three (3) calendar years.

Section 5
Intermittent LWOP (Exclusive of FMLA)

Intermittent LWOP may be granted on a recurring, temporary basis (*e.g.*, to accommodate a medical or family situation warranting regular absences). However, LWOP normally will not be granted on a regular weekly or bi-weekly basis that would, in effect, permanently reduce a full-time employee's work schedule to an informal part-time schedule.

Section 6
Cancellation

A. The Employer will not cancel previously approved LWOP unless circumstances exist that were not foreseen and could not reasonably have been foreseen at the time approval was given, and the employee's absence would have a significant adverse effect on staffing, workload, or mission requirements. Examples of unforeseen circumstances include, but are not limited to: unavailability of staff for an extended period due to illness, emergency, resignation, or similar; or unanticipated change in work requirements, including vital, new, and time sensitive projects. The Parties agree that LWOP that has been approved should be sparingly cancelled. When an approved LWOP request is cancelled, the employer will provide an explanation of the reason for cancellation in writing.

B. If the Employer determines to cancel short-term or intermittent LWOP, the Employer will notify the employee as soon as practicable. The Employer may authorize the employee to take up to two (2) business days to report to the Official Duty Station. Where reporting to the Official Duty Station will create an undue hardship for the employee, an employee with a Telework Agreement is entitled to request episodic, hardship, or medical telework in accordance with Article 11 of this Agreement (Telework), or request annual leave or sick leave (where appropriate).

C. If the Employer determines to cancel extended LWOP, the Employer will notify the affected employee as soon as practicable and may authorize up to 15 calendar days to report to the Official Duty Station, depending on the specific circumstances. Where reporting to the Official Duty Station will create an undue hardship for the employee, an employee may request episodic, hardship, or medical telework in accordance with Article 11 of this Agreement (Telework), or request an extension of up to an additional 15 calendar days. The employee may also request annual leave or sick leave (where appropriate).

D. An employee may also cancel previously approved LWOP.

Section 7
Leave Restriction

If the Employer determines that an employee has exhibited a pattern of failure to comply with the procedures set forth in this Article for requesting LWOP, or is otherwise exhibiting a pattern of abuse of LWOP, the Employer may notify the employee in writing that subsequent LWOP requests may not be approved unless the employee confirms approval of LWOP in advance. This notice will include the basis for imposing this requirement and will specify the length of time during which the requirement will be in place. Normally, such requirement will be in place for no more than six (6) months. At the end of the stated period, the Employer may terminate or renew the requirement, depending on the employee's compliance with the procedures for requesting LWOP during this period. The Employer's decision will be in writing.

ARTICLE 38: GRIEVANCE PROCEDURE

Section 1
Definition of a Grievance

A. Consistent with 5 U.S.C. § 7103(a)(9), a "grievance" is defined as any complaint:
   1. By an employee concerning any matter relating to his or her employment;
   2. By the Union concerning any matter relating to the employment of an employee; or
   3. By an employee, the Employer, or the Union concerning:
      (a) The effect of interpretation or claim of breach of this Agreement; or,
      (b) Any claimed violation, misinterpretation, or misapplication of any law, rule, regulation, or CFTC policy affecting conditions of employment.

Section 2
Informal Resolution of Grievances

The Employer and the Union will endeavor to resolve their concerns informally prior to submitting grievances under this Article.

Section 3
Exclusions from the Grievance Procedure

A. The grievance procedures of this Article shall not apply to the following:
   1. Any claimed violation of Subchapter III of Chapter 73 of Title 5 U.S.C. (relating to prohibited political activities);
   2. Retirement, life insurance, or health insurance;
   3. A suspension or removal under 5 U.S.C. § 7532 for reasons of national security;
   4. Any examination, certification, or appointment;
   5. The classification of any position that does not result in the reduction in grade of the employee;
   6. The subject of a formal complaint of discrimination that has already been filed as a formal EEO complaint;
   7. A decision or action for which a notice of appeal has already been filed with the Merit Systems Protection Board;
   8. The separation of a probationary, temporary (180 days or less), or trial period employee;
   9. Reprimands received by employees serving a probationary or trial period;
   10. Matters specifically excluded by other Articles of this Agreement;
   11. The non-selection from among a group of properly ranked and certified candidates consistent with 5 C.F.R. § 335.103(d);
   12. The content of job elements and performance standards that have been established in accordance with 5 U.S.C. Chapter 43;

13. The loss or suspension of an employee's security clearance;
14. The content of published government-wide regulations or CFTC policies on ethics rules and classification matters;
15. The return of an employee serving a supervisory or managerial probation period to a non-supervisory or non-managerial position according to 5 C.F.R. Part 315;
16. The issuance of a performance improvement plan. (If the final decision of the Employer is to take an adverse action as a result of the performance improvement plan, an employee or the Union on the employee's behalf may grieve those results or the failure of the Employer to follow appropriate performance improvement plan procedures. Grievances over the employee's performance rating are also not excluded under this provision.);
17. Non-disciplinary actions, such as performance feedback and verbal counseling;
18. A notice of proposed disciplinary/adverse action, furlough, or removal. (Issues relating to such proposal notices may, however, be raised in connection with any grievance over the final decision on the proposed action.);
19. Non-adoption of a suggestion. and
20. Filling of supervisory or other positions outside the bargaining unit.

Section 4
Election of Forum

A. This grievance procedure will be the exclusive procedure available to bargaining unit employees for the processing and disposition of grievances as defined in Section 1 of this Article except when the employee has a statutory right of choice (*e.g.*, adverse actions, actions taken for unacceptable performance, or EEO complaints).

B. Pursuant to 5 U.S.C. § 7116(d), if a grievance also constitutes an unfair labor practice, the aggrieved party may seek redress under this Article or under the unfair labor practice procedure, but not both. The employee, employee's designated representative, or Union will be deemed to have exercised his or her option to raise a matter either under the appropriate statutory procedure or under this grievance procedure at such time as the employee timely files an unfair labor practice charge or timely files a grievance in writing in accordance with the provisions of this Article, whichever event occurs first.

C. A grievance involving discrimination based upon race, color, religion, gender, national origin, age, handicapping condition, marital status, or political affiliation may, at the discretion of the grievant, be raised either under the appropriate statutory procedure or under this grievance procedure, but not both. Pursuant to 5 U.S.C. § 7121(d), an employee, employee's designated representative, or Union will be deemed to have exercised his or her option to raise a matter either under the appropriate statutory procedure or under this grievance procedure at such time as the employee timely files a formal complaint of discrimination or timely files a grievance in writing concerning the matter or occurrence in accordance with the provisions of this Article, whichever event occurs first.

D. An employee who receives a written decision letter effecting an adverse or unacceptable performance action may elect to challenge such action in one (1) of the following ways:

1. By filing an appeal with the Merit Systems Protection Board in accordance with applicable law and regulation;
2. Under this Agreement, and with the Union's concurrence, by appealing directly to arbitration within the time set forth in Article 39 of this Agreement (Arbitration);
3. By filing a formal complaint of discrimination under the administrative EEO process; or
4. By filing a claim of whistleblower retaliation or prohibited personnel practice with the U.S. Office of Special Counsel.

Section 5
Role of the Union in the Grievance Process

A grievant is entitled to be assisted by a Union representative in the submission of grievances. If a grievant submits a grievance without Union representation, the Union will generally be given the opportunity to be present at all formal discussions of the grievance. The Union will be given reasonable advance notice of such discussions. Only the Union may invoke arbitration.

Section 6
Reasonable Time for Employees in the Grievance Process

At each of the first and second grievance steps, a grievant is entitled to a reasonable amount of time during duty hours, normally not to exceed two (2) hours, to prepare a grievance and a reasonable amount of time during duty hours to present a grievance. Time for this purpose must be requested in advance from the employee's immediate supervisor. If the request is denied, the supervisor will identify the time period, normally within one (1) business day, when the employee's request will be granted.

Section 7
Content of Grievances

A. Every grievance filed pursuant to this Article must be in writing and must contain the following information:

1. The date submitted;
2. A full description of the alleged violation in sufficient detail to identify the basis of the grievance;
3. References to the appropriate contractual provision(s) or other authority alleged to have been violated;
4. A statement of the specific remedy(ies) sought;
5. The name of the grievant(s), to the extent known, subject to the timeframes specified in Section 9 of this Article (Group Grievances); and

6. A copy of Union designation if the Union is serving as the individual grievant's representative.

Section 8
Employee Grievances

A. A grievance submitted by an employee will be processed as follows;

1. Step 1. A grievant must submit a written grievance to his or her immediate supervisor and the Chief of Workforce Relations within 20 calendar days of the event giving rise to the grievance or within 20 calendar days of the time he or she reasonably should have known of the occurrence giving rise to the grievance. If a meeting is requested, the supervisor shall schedule a meeting with the grievant and the Union representative (if any) at a mutually agreeable date and time within 15 calendar days following the date of the grievant's submission, unless it is mutually agreed that the meeting be scheduled at a later date. The meeting may be conducted in person (provided there are no additional costs to the Employer) or by telephone. The supervisor will answer the grievance in writing within 15 calendar days following the meeting or, if no meeting is held, within 30 calendar days of the submission. If the grievance is denied, the reasons for denial will be in this written answer and the response will indicate the right to submit the grievance to the next step of the procedure. A copy of the answer will be provided to the grievant and to the Union representative (if any).

   If, because of the nature of the grievance, either the grievant, immediate supervisor of the grievant, or the Union believes the immediate supervisor is not the appropriate Step 1 official, that party may contact the Employer to discuss whether the immediate supervisor should hear the grievance. The Employer, in its sole discretion, will then designate the appropriate official to resolve the Step 1 grievance.

2. Step 2. If the grievant is not satisfied with the Step 1 answer, or the Employer has not agreed to provide the lawful requested remedies, the grievance may be submitted in writing to the grievant's office head, or his or her designee, and the Chief of Workforce Relations no later than 15 calendar days following the date of the Step 1 answer or the day the answer was due. This submission will consist of the original written grievance and the Step 1 answer (if provided). The office head, or her or his designee, may arrange for a meeting with the grievant and the Union representative (if any), in person or by telephone, at a mutually agreeable time within 15 calendar days following the date of the grievant's submission. The office head, or her or his designee, will answer the grievance in writing within 15 calendar days following the meeting or, if no meeting is held, within 30 calendar days of the submission. If the grievance is denied, the reasons for denial will be in this written answer. A copy of the answer will be provided to the grievant and to the Union representative (if any).

Notwithstanding the foregoing, if the grievant's office head was the reviewing official for Step 1, then this Step 2 will be bypassed.

3. Step 3. The Union shall, within 30 calendar days following receipt of the Step 2 answer (or Step 1 answer if Step 2 has been waived) or the day the answer was due, notify the Chief of Workforce Relations via fax or email (read receipt) if it intends to invoke arbitration in accordance with Article 39 of this Agreement (Arbitration).

Section 9
Group Grievances

A. A group grievance is defined as two (2) or more employees who have designated the Union as their representative, or the Union on behalf of employees filing a timely grievance involving the same facts and the same issues arising out of the same incident, and seeking the same or similar relief. Any FLSA claims must be brought consistent with the procedural requirements set forth in Chapter 29 of the United States Code.

B. A group grievance will be processed as follows:

1. Step 1. The Union must submit a written grievance to the Chief of Workforce Relations within 20 calendar days of the event giving rise to the grievance or within 20 calendar days of the time the Union reasonably should have known of such occurrence. If the Union is unable to provide the name of each grievant at the time of filing, the Union may otherwise identify the employees covered by the grievance within 20 calendar days of the date the grievance is filed.

   If requested by the Union, the Chief of Workforce Relations, or his or her designee shall schedule a meeting at a mutually agreeable date and time within 15 calendar days following the date of the Union's submission, unless it is mutually agreed that the meeting be scheduled at a later date. The meeting may be conducted in person (provided there are no additional costs to the CFTC) or by telephone. The Chief of Workforce Relations, or his or her designee, will answer the grievance in writing within 15 calendar days following the meeting or, if no meeting is held, within 30 calendar days of the submission. If the grievance is denied, the reasons for denial will be in this written answer and the response will indicate the right to submit the grievance to the next step of the procedure. A copy of the answer will be provided to the Union.

2. Step 2. If the Union is not satisfied with the Step 1 answer, or the Employer has not agreed to provide the lawful requested remedies, the grievance may be submitted in writing to the Chief of Workforce Relations. The Chief of Workforce Relations, or his or her designee, will identify the appropriate deciding official. The grievance may be submitted no later than 15 calendar days following the date of the Step 1 answer or the day the answer was due. This submission will consist of the original written

grievance and the Step 1 answer (if provided). The deciding official may arrange for a meeting with the Union, in person or by telephone, at a mutually agreeable time within 15 calendar days following the date of the Union's submission. The deciding official will answer the grievance in writing within 15 calendar days following the meeting or, if no meeting is held, within 30 calendar days of the submission. If the grievance is denied, the reasons for denial will be in this written answer. A copy of the answer will be provided to the Union.

3. Step 3. The Union shall, within 30 calendar days following receipt of the Step 2 answer, or the day the answer was due, notify the Chief of Workforce Relations via fax or email (read receipt) if it intends to invoke arbitration in accordance with Article 39 of this Agreement (Arbitration).

Section 10
Union or CFTC Institutional Grievances

A. In the case of a grievance that the Union or CFTC, at the national level, may have against the other party, the grievant will submit the grievance to the other party in writing within 30 calendar days of the event(s) giving rise to the grievance or within 30 calendar days of the time the grievant reasonably should have known of the occurrence giving rise to the grievance. Any grievance under this Section 10 of this Article shall be submitted via email (read receipt) to the Chief of Workforce Relations or the NTEU National President or his or her designee. The grievance will provide the following information:

1. The date submitted;
2. A full description of the alleged violation in sufficient detail to identify the basis of the grievance;
3. References to the appropriate contractual provision(s), law, rule, or regulation alleged to have been violated;
4. A statement of the specific remedy(ies) sought; and
5. The name of and contact information for the Union or CFTC representative who is handling the matter.

B. Upon mutual consent, the designated representatives of the parties will meet within 15 calendar days of the submission of the grievance. The party against whom the grievance is filed will answer the grievance in writing within 15 calendar days following the meeting or 30 calendar days from the receipt of the grievance. If either party is not satisfied with the response, or the other party has not agreed to provide the lawful requested remedies, within 30 calendar days following receipt of the response the grievant may invoke arbitration in accordance with Article 39 of this Agreement (Arbitration).

Section 11
Time Limits and Calculation

Failure of either party to render a decision within any time limits specified in this Article will entitle the grievant to progress the grievance to the next step without a decision unless an extension of time limits has been mutually agreed. If the deadline for any action in this Article falls on a non-workday (*e.g.*, Saturday, Sunday, or holiday), the deadline will be extended to the next workday. Failure of either party to pursue a grievance within the prescribed timelines (including any mutually agreed to extensions of time) will result in the grievance being withdrawn with prejudice. As applicable, time limits shall begin to run on the day after the date of receipt of the document that triggers the particular time limit.

ARTICLE 39: ARBITRATION

Section 1
Request for Arbitration

A. This Article will be applied consistent with 5 U.S.C. § 7121. The Union or CFTC will make a request for binding arbitration in writing within 30 calendar days after the receipt of a Step Two decision pursuant to Article 38 of this Agreement (Grievance Procedure).

B. The moving Party will, within ten (10) calendar days after invocation of arbitration, request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service (FMCS). As soon as practicable after the list is received from the FMCS, the Parties will select an arbitrator by alternatively striking names from the list until one (1) name remains. Which party strikes first will be determined by the date the FMCS list is issued. The Union strikes first if the date is an odd number and the CFTC strikes first if the date is an even number. Any arbitration will be held on the Employer's premises or at the Regional CFTC office.

Section 2
Exclusions

Matters not grievable under Article 38 of this Agreement (Grievance Procedure) are not subject to the arbitration procedure.

Section 3
Costs

The Parties will share equally the FMCS and arbitrator's costs and will pay for travel for their own witnesses.

Section 4
Pre-Arbitration Disclosure and Conference Call

A. At least seven (7) business days prior to the hearing, the Parties agree to hold a conference call with the arbitrator to attempt to stipulate to the issue(s) presented and discuss the logistics of the hearing. Upon mutual agreement, the Parties may decide the call need not include the arbitrator.

B. During the conference call, or no later than seven (7) days prior to the date the hearing is scheduled, the Parties will make a good faith effort to exchange:

1. Witness lists. Proposed witness lists, including a brief synopsis of the expected testimony of each witness; and
2. Documents. Copies of documents, with an index, proposed to be offered into evidence.

C. Disputes regarding matters, including issue(s) statements, proposed witness lists, and/or proposed documents, will be resolved by the arbitrator.

ARTICLE 40: DISCIPLINARY ACTION

Section 1
Definition

For the purposes of this Article, a disciplinary action is defined as a written reprimand to be filed in an employee's OPF or a suspension of 14 calendar days or less. Disciplinary actions will be taken only for such cause as will promote the efficiency of the service. Such actions must be consistent with applicable laws and government-wide regulations.

Section 2
Progressive Discipline

In effecting disciplinary actions, the Employer supports the use of progressive discipline where appropriate. In taking disciplinary action, the Employer will consider the existence of any mitigating and/or aggravating circumstances, the nature of the position occupied by the employee at issue, and any other factors bearing upon the incident(s) or act(s) underlying the action. The degree of discipline administered will be proportionate to the offense and will be determined on a case-by-case basis. The Employer may consider taking informal action before taking disciplinary action, such as oral or written counseling.

Section 3
Grievances of Disciplinary Actions

An employee against whom a disciplinary action has been taken may grieve that action under Article 38 of this Agreement (Grievance Procedure). For actions effected after a second level management decision, the grievance procedure may be bypassed and the Union may elect to proceed directly to arbitration in accordance with Article 39 of this Agreement (Arbitration).

Section 4
Procedures

A. The following procedures will apply to letters of reprimand:
   1. The Employer will hand-deliver the letter to the employee, if practicable. Letters that are not hand-delivered may be sent via mail or email (with read receipt).
   2. The letter will include the specific reasons for the action and the retention period in the employee's OPF as well as the employee's right to reply, right to file a grievance, and time limits on these rights.

B. The following procedures will apply to suspensions of 14 calendar days or less:
   1. The employee will be given advance written notice stating the specific reason for the proposed suspension. In cases where a disciplinary action is proposed for reasons of off-duty conduct, the Employer's written notification will contain a statement of the

nexus between the off-duty conduct and the efficiency of the service. A list of material relied upon to support the proposed disciplinary action will be attached.

2. The employee may make an oral and/or written reply to the proposed action. The employee has ten (10) calendar days from the date the employee either receives notice or 15 calendar days from date of mailing of the proposed action, whichever is shorter, to submit a written response. Any written reply to the deciding official must be submitted through HRB's Workforce Relations. The employee will be granted a reasonable amount of duty time, up to four (4) hours, to prepare his or her response to the proposed suspension. The Employer may consider a request from the employee for additional duty time to prepare her or his response. The Union may interview bargaining unit witnesses who provided statements relied on by the Employer. Absent mutual agreement, no deadlines will be extended to allow the Union to conduct such interviews. If the employee elects to make an oral reply, he or she must contact HRB's Workforce Relations Section within seven (7) calendar days from the date of the mailing or receipt of the notice of proposed suspension, whichever is shorter, to arrange a time for the oral response. The oral reply will be made to the deciding official, who may prepare a summary of the oral reply for the record. If prepared, the Employer will provide a copy of this summary to the employee and the employee's representative, and allow three (3) calendar days for comment and/or correction by the employee.
3. The deciding official shall issue a written decision based on the evidence presented and the employee's response, if any, within a reasonable period of time following the oral or written reply.
4. The final decision in any sustained suspension will be made by a higher level management official than the official who issued the notice of proposed action unless the proposal is issued by the Chairman of the CFTC. In this case, the Chairman may appoint a deciding official. The final decision letter will contain the Employer's findings with respect to each charge and/or specification made against the employee in the notice of proposed action and the dates of the suspension. The final decision will contain a statement of the employee's right to file a grievance as stated in the negotiated grievance procedure in Article 38 of this Agreement (Grievance Procedure).

Section 5
Documentation

A. The employee and his or her designated representative are entitled to documents and evidence relied upon by the Employer in making the proposal for disciplinary action. This provision in no way limits the Union's right to information under 5 U.S.C § 7114.

B. Letters of reprimand will be removed from an employee's OPF no later than three (3) years from the date of issuance.

C. If an action is rescinded, all official documents related to the action that are contained in the employee's OPF will be destroyed.

ARTICLE 41: ADVERSE ACTIONS

Section 1
Definition

For purposes of this Article, consistent with 5 U.S.C. Chapter 75 and 5 C.F.R. Part 752, an adverse action is a suspension for more than 14 calendar days, a removal, a reduction in grade or pay, or a furlough of 30 calendar days or fewer. The Employer may only take adverse actions for such cause as will promote the efficiency of the service and in accordance with applicable laws and regulations.

Section 2
Progressive Discipline and Mitigating/Aggravating Factors

In effecting adverse actions, the Employer supports the use of progressive discipline where appropriate and consideration of the use of similar discipline for employees who engage in factually similar misconduct. The Employer will consider informal and disciplinary actions before taking adverse action and will further consider the existence of any mitigating and/or aggravating circumstances, the nature of the position occupied by the employee at issue, and any other factors bearing on the incident(s) or act(s) underlying the action. The degree of discipline administered will be proportionate to the offense and will be determined on a case-by-case basis.

Section 3
Procedures

A. The Employer will follow these procedures when proposing and deciding to take adverse action against an employee under this Article:

1. Any proposed furlough of 30 days or less will be implemented pursuant to 5 C.F.R. Part 752.
2. The Employer will provide the employee with at least 30 calendar days' advance written notice (unless Section 3.A.3 of this Article applies) stating the specific reasons for the proposed adverse action. In cases where an adverse action is proposed for reasons of off-duty misconduct, the Employer's written notification will also contain a statement of the nexus between the off-duty misconduct and the efficiency of the employee's service to the Employer. The notification will describe why and how there is a connection between the specific off-duty misconduct and the efficiency of the employee's service to the Employer. The employee will have the opportunity to make an oral and/or written answer to the statement of nexus consistent with this Section 3 of this Article.
3. Where 5 C.F.R. § 752.404(d)(1) (the "crime provision") applies, in cases of proposed removal, suspension, or indefinite suspension where the Employer has reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, the employee will be given written notice stating the

specific reason(s) for the proposed action seven (7) days in advance of the action. The employee will be given the opportunity, but will not be obliged, to respond orally and/or in writing to the proposed action prior to a decision being made. However, the employee's reply or replies must be received by the Employer within seven (7) days of receipt by the employee of the advance written notice.

4. At the time of the advance written notice, the Employer will provide the employee with a copy of any information relied on to support the proposed adverse action. This provision in no way limits the Union's right to information under 5 U.S.C. § 7114.
5. The advance written notice will include the statement: "You have the right to be represented by a NTEU representative, an attorney, or other representative of your choice."
6. The Employer will grant the employee a reasonable amount of administrative time, normally no more than eight (8) hours, to prepare his or her response to the proposed adverse action. The Employer may consider a written request from the employee for additional duty time to prepare his or her response.
7. The Employer will provide the employee the opportunity to reply to the notice orally and/or in writing. The employee has ten (10) calendar days from the date the employee receives notice or 15 days from the date of mailing of the notice of proposed adverse action, whichever is shorter, to submit a written response. If the employee wishes to respond orally, he or she must contact HRB's Workforce Relations Section within seven (7) calendar days from the date of mailing or receipt of the notice, whichever is shorter, to arrange a time for the oral response. The oral response, if any, must take place at a prearranged time. Any written response to the deciding official must be submitted through HRB's Workforce Relations Section. The Employer may consider, and grant at its discretion, a written request from the employee to extend the reply period, provided such request is made prior to the submission deadline. If the proposed action is being taken under the crime provision (5 C.F.R. § 752.404(d)(1)), no request for an extension will be granted.
8. If the employee elects to make an oral reply, the deciding official, or his or her designee, will prepare a summary of the oral reply for the record, record the reply, or use a transcription service. The Employer will provide a copy of this summary, recording, or transcript to the employee and the employee's designated Union or personal representative and allow at least one (1) business day for comment and/or correction.
9. The Employer will consider the employee's reply.
10. The Employer will provide the employee with a written decision letter concerning the proposed adverse action. Normally, the decision will be made by a management official of a higher level than the official who issued the notice of the proposed adverse action. The decision letter will be issued prior to the effective date of the adverse action and will contain the Employer's findings with respect to each specification found to be substantiated against the employee in the notice of proposed action. The Employer also will include a statement in the decision letter advising the employee of his or her appeal rights to challenge the adverse action.

11. Where the employee chooses to appeal, the Union may not also grieve except as an institutional or group grievance.

B. Under this Article, prior to deciding what disciplinary action is a proper response to the incident or act, the Employer will consider the factors outlined in *Douglas v. Veterans Administration* (5 M.S.P.R. 280 (1981), as follows:

1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense: was intentional, technical, or inadvertent; was committed maliciously or for gain; or was frequently repeated.
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.
3. The employee's past disciplinary record.
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's work ability to perform assigned duties.
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses.
7. Consistency of the penalty with any applicable agency table of penalties.
8. The notoriety of the offense or its impact upon the reputation of the agency.
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense or had been warned about the conduct in question.
10. The potential for the employee's rehabilitation.
11. Mitigating circumstances surrounding the offense such as: unusual job tensions, personality problems, mental impairment, or harassment; or bad faith, malice, or provocation on the part of others involved in the matter.
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Section 4
Documentation

A. Unless non-disclosable as a matter of law, information relied upon in making an adverse action determination will be made available to the affected employee and to his or her representative upon the employee's written designation. This provision in no way limits the Union's right to information under 5 U.S.C. § 7114.

B. If an adverse action is rescinded, all documents related to the action will be destroyed and confirmation of that destruction will be relayed to the employee. The Employer will not destroy any documentation required to be preserved under laws, rules, or regulations.

Section 5
MSPB or Arbitration of the Adverse Action

A. If the Employer's final decision is to effect an adverse action against a bargaining unit employee, the employee may appeal the decision to the Merit Systems Protection Board in accordance with applicable law or, with the consent of the Union, to binding arbitration. The employee may not appeal an adverse action to both the MSPB and arbitration.

ARTICLE 42: ACTIONS FOR UNACCEPTABLE PERFORMANCE

Section 1
General

A. The Employer shall administer any unacceptable performance action in a manner consistent with 5 U.S.C. Chapter 43 and 5 C.F.R. Part 432. The Employer will make reasonable efforts to assist the employee in improving deficient performance and will provide reasonable opportunity for the employee to correct performance problems before initiating any removal or demotion action. For purposes of this Article, an action based on unacceptable performance is a reduction in grade or removal of an employee who fails to meet the satisfactory level of performance in one (1) or more critical element(s) of the employee's position.

B. An employee whose reduction in grade or removal is proposed under this Article is entitled to Union representation. This does not entitle the Union to attend performance meetings including meetings concerning performance improvement plans.

C. The provisions of this Article do not apply to the removal of probationary or trial period employees as defined by 5 U.S.C. § 7511.

D. No employee will be the subject of an action based on unacceptable performance unless that employee's performance fails to meet established performance standards in one (1) or more critical job elements of the employee's position after having been afforded an adequate opportunity under the circumstances to demonstrate acceptable performance. Actions taken under this Article to place an employee on a performance improvement plan (PIP) as described in Section 2 of this Article shall be supported by substantial evidence.

Section 2
Performance Improvement Plans

A. When an employee's performance in any critical element(s) is determined to be unsatisfactory, the employee will be placed on a PIP. The PIP will include the following:

1. An identification of the critical elements and performance standards for which performance is unsatisfactory and include the minimum performance standard that must be achieved as set forth in the employee's performance plan in order to successfully complete the PIP;
2. An identification of the Employer's performance expectations and the specific improvement needed to address the unacceptable performance;
3. A statement that will advise the employee of the length of time (generally no less than 60 days and usually not more than 90 days, and subject to Section 2.Bof this Article) that the employee has to bring performance up to an acceptable level (the "opportunity period");

4. A description of what the Employer will do to assist the employee to improve the unacceptable performance during the opportunity period. The Employer may, upon written request of the employee or where otherwise deemed appropriate by the Employer, provide training, closer supervision, mentoring, counseling, or other assistance as appropriate to the employee for the purpose of assisting the employee's efforts to meet performance expectations before taking action to remove the employee from his or her position;
5. Identification of which supervisor or management official(s) will be overseeing the PIP and available to assist the employee in reaching an acceptable level of performance;
6. Meetings that may be conducted at the request of the employee or at the discretion of the supervisor. Regular meetings (twice a month) are encouraged between the supervisor or appropriate management official(s) and the employee to discuss the status of the employee's performance and continued expectations; and
7. A statement that, unless the employee's performance in the critical element(s) improves to a satisfactory level by the end of the PIP and is sustained for a period of one (1) year from the start of the PIP, the employee may be reduced in grade or removed.

B. In the event that unforeseen circumstances arising during the PIP period prevent the rating official from assessing the employee's performance at the end of the period (*e.g.*, prolonged absence due to illness, injury, or similar), the rating official shall extend the PIP period until an assessment can be made, consistent with law. Where absence is determined to result from abuse of leave, no extension will be granted.

C. However, when the employee's performance remains unsatisfactory, and where there is a critical need for the employee's duties to be performed at a satisfactory level, the supervisor may determine that the employee's performance in a critical element(s) continues to be unsatisfactory prior to the end of the proposed PIP period if the employee has failed a task designated as critical on his or her PIP and the employee has had a reasonable opportunity to demonstrate satisfactory performance in the area in which the critical need was identified.

Section 3
Notice of Proposed Action

A. An employee whose reduction in grade or removal is proposed under this Article is entitled to 30 calendar days' advance notice of the proposed action. Notice of the proposed action will be communicated to the employee and the designated Union representative simultaneously. The notice shall state:

1. The action being proposed;
2. The critical elements of the employee's position on which the performance is considered unsatisfactory;

3. The specific instances of unacceptable performance on which the present action is based;
4. The employee's right to be represented by the Union, an attorney, or other representative;
5. The employee's right to respond, either orally in writing or both, within ten (10) calendar days;
6. The name of the individual to whom the response shall be made and who will serve as the CFTC's deciding official;
7. The employee's right to review the material relied upon to support the reasons in the notice;
8. That the 30 calendar day notice period shall begin when the employee received the notice or five (5) days after mailing by regular and overnight mail to the employee's last address of record; and
9. That a determination as to the reduction in grade or removal will be made during the notice period, unless extended consistent with law and regulation, to be effective after the expiration of the notice period.

B. The Employee is entitled to all documents and information relied upon by the CFTC in making the proposal. This provision in no way limits the Union's right to information under 5 U.S.C. § 7114.

C. The employee will be given ten (10) calendar days, exclusive of the date of receipt of the notice of the adverse action, to reply orally and/or in writing to the proposed action. The written reply will be made through HRB's Workforce Relations to the deciding official or her or his designee. If the employee decides to provide an oral reply, he or she must contact HRB's Workforce Relations within seven (7) days of the notice. The employee may request an extension prior to the expiration of the ten (10) day period. The Employer will consider, and grant at its discretion, a written request from the employee to extend the reply period provided such request is made prior to the submission deadline.

D. The employee will be granted a reasonable amount of administrative time, normally up to eight (8) hours, to prepare her or his reply to the proposed action. The Employer will consider a written request from the employee for additional duty time to prepare.

E. An employee may raise a medical condition for the Employer's consideration consistent with 5 C.F.R. § 432.105(a)(4)(iv).

Section 4
Decision

A. The decision to retain, reduce in grade, or remove the employee shall be made within 30 calendar days after the expiration of the advanced notice period. The period may be extended for good cause or consistent with government-wide regulation.

B. The Employer may not rely on any alleged deficiency or criticism of the employee's performance to which the employee has not been given the opportunity to reply either orally or in writing. The Employer's written decision shall specify the instances of unacceptable performance by the employee on which the action is based, the specific action to be taken, the effective date, and the employee's applicable appeal and/or grievance rights.

C. If the employee's performance improves to satisfactory during the opportunity period, the employee will be notified in writing. Any further action must be consistent with law and regulation.

D. The decision notice will include a statement indicating that the adverse action will be placed in the employee's OPF.

E. An employee will be given an opportunity to resign or, if eligible, to retire after receiving a notification of action to reduce in grade or remove. In such situations, the employee must submit the appropriate paperwork or application before the effective date of the action. On request, she or he will be advised of all rights and benefits to which the employee may be entitled, including but not limited to, retirement, annuity, or health insurance.

Section 5
Appeal/Grievance

An employee may appeal any final action taken pursuant to this Article in accordance with established law, rule, and regulation, or by filing an arbitration request through the Union under Article 39 of this Agreement (Arbitration) or by filing any other appeal in accordance with law. An employee may not utilize more than one (1) procedure and must elect the desired procedure in writing within the established time limits.

Section 6
Overturned Actions

If an action for unacceptable performance is canceled or rescinded, all official documents related to the action that are contained in the employee's OPF will be purged.

Section 7
Employee Who Subsequently Obtains a Satisfactory Rating

In the event that the employee maintains a satisfactory rating for one (1) year from the date of the advance written notice, the Employer shall remove any record from the employee's OPF of the unacceptable performance for which the action was proposed.

ARTICLE 43: FURLOUGH DUE TO LAPSE IN APPROPRIATIONS

Section 1
Procedures

A. The following procedures shall apply when a furlough may be necessary due to a lapse in appropriations/debt ceiling limitation, failure to extend the debt ceiling, or lack of a continuing resolution. Such a furlough may be necessary when an agency no longer has the funds to operate and must shut down those activities that are not excepted pursuant to the Anti-deficiency Act, 31 U.S.C. §§ 1341, 1342, and 1517.

1. The Employer will invite NTEU to be present at any meetings with bargaining unit employees where the discussion involves a potential and/or impending government shutdown. Prior to any such furlough and time permitting, the Union will be given notice and an opportunity to bargain the impact and implementation of the proposed furlough consistent with law and this Agreement.
2. The Employer retains the right to determine which duties and responsibilities must be performed during a furlough and which employees are qualified to perform such duties and responsibilities. Whenever the Employer prepares any list of functions, positions, and/or employees that have been designated as "excepted" and therefore expected to continue working during a furlough, the Employer will provide a copy to NTEU immediately upon finalization of the list. Whenever the Employer designates bargaining unit employees as excepted, the Employer will provide the names of the employees to NTEU within five (5) days.
3. Employees will receive written notification if they are designated as an excepted employee and required to work. The Employer will consider an employee's request not to work during a furlough due to a demonstrated hardship.

B. Employees are advised to listen to the media to determine if the furlough has been resolved. Once the furlough has ended, the Employer will issue a CFTC-wide notification using SendWordNow (or similar method of communication) of the conclusion of the furlough. The notification will include instructions on reporting to work. However, any employee who is unable to report to work as instructed will be able to take leave (not administrative leave) for that day.

Section 2
Use or Lose Leave

If an employee is unable to use her or his officially scheduled and approved "use or lose" annual leave due to the furlough, and if she or he is unable to reschedule it, such annual leave will be restored.

Section 3
Contact Information for Unemployment Offices

During any fiscal year in which a furlough occurs and in advance of the furlough, the Employer shall provide all employees with contact information for the unemployment offices in Washington, DC and the states where the regional offices are located.

Section 4
Outside Employment

When in a non-pay status, employees who have been approved for outside employment may continue to engage in such outside employment during the furlough. An employee's request to engage in outside employment that is made in anticipation of the furlough will be submitted in accordance with Article 8 of this Agreement (Outside Employment). When a furlough has been announced, the Employer will review requests for outside employment as soon as practicable and will furnish initial responses within two (2) business days of receipt of the requests. If the initial response indicates that more information is needed, a second response given within two (2) business days of receipt of that additional information. CFTC employees will be reminded that they remain subject to all applicable federal ethics laws and all applicable ethics regulations when furloughed.

Section 5
Administrative Furloughs

The aforementioned procedures will not apply to an administrative furlough pursuant to 5 U.S.C. § 7511(a)(5), which is the placing of employees in a temporary status without duties and pay because of a lack of work or funds or other non-disciplinary reasons. Administrative furloughs will be imposed only for such cause as will promote the efficiency of the service, consistent with Article 41 of this Agreement (Adverse Actions), and following notice and an opportunity to bargain with NTEU over matters that are not covered by this Agreement in accordance with Article 6 of this Agreement (Midterm Bargaining).

ARTICLE 44: REDUCTION IN FORCE

Section 1
General

This Article applies to any reduction in force (RIF), as that phrase is defined by 5 C.F.R. Part 351, conducted by the Employer during the term of this Agreement. Any RIF will be carried out in accordance with applicable laws, rules, and regulations. The Employer will give the Union at least 60 calendar days advance written notice prior to the issuance of the Certificate of Expected Separation (CES) to employees. The CES shall be issued to employees not less than 60 calendar days and up to six (6) months prior to the effective date of the RIF (*i.e.*, the off-rolls date).

Section 2
Notice

A. The notice referred to in Section 1 of this Article shall comply with statutory and regulatory notice requirements, and include any reorganization associated with the RIF and the following information:

1. The reasons for the actions to be taken;
2. The applicable competitive area(s), approximate numbers, types, and geographic locations of the positions affected, and the anticipated effective date;
3. Projections with an analysis of the number of employees that will likely be separated; and
4. The information relied upon by the Employer and a description of the reorganization associated with the RIF, including all related reports/analysis.

Section 3
Negotiations

The Employer and the Union will negotiate, as appropriate, the procedures to be followed in the implementation of the RIF in accordance with Article 6 of this Agreement (Midterm Bargaining). In such negotiations, the Union may make proposals on any matter that is not expressly covered by this Agreement. Unless permitted by law, impacted employees will not be separated from the Employer prior to the completion of bargaining, through impasse resolution if necessary.

ARTICLE 45: CONTRACTING OUT

Section 1
General

The Employer's competitive sourcing practices will conform to applicable law, rule, and regulation as well as the CFTC's procurement policies.

Section 2
A-76 Studies

Prior to engaging in A-76 studies that could impact the conditions of employment of bargaining unit employees, the Employer will notify the Chapter and bargain impact and implementation as required by law and in accordance with Article 6 of this Agreement (Midterm Bargaining).

Section 3
Other Competitive Sourcing Actions

A. If the Employer decides to contract out bargaining unit work, and it is reasonably foreseeable that the decision will have a greater than *de minimis* impact on the conditions of employment of bargaining unit employees, the Employer shall notify the Union and engage in impact and implementation bargaining in accordance with Article 6 of this Agreement (Midterm Bargaining). Such notification will include the following:

1. The name of the contractor;
2. The location of the work; and
3. The nature of the work.

ARTICLE 46: UNION REPRESENTATIVES, OFFICIAL TIME, AND ACCESS TO FACILITIES

Section 1
Definition

Whenever the term "steward" is used in this Article or Agreement, it shall include Chapter officers, Chief Stewards, and any other bargaining unit employees authorized by the Chapter in advance to act as a steward on its behalf.

Section 2
Official Time

A. The Chapter President may designate one (1) steward (the Chapter President, Executive Vice President, or the Chief Steward) who will be on official time for up to 50% of her or his total work time. The designee will use best efforts to schedule necessary representational work during the granted official time.

B. The Employer agrees to grant all other stewards appointed by the Chapter President reasonable requests for official time per calendar year. Such requests for reasonable official time must be submitted in writing in advance to an employee's first line supervisor. In this regard, the steward will inform her or his supervisor as to when he or she will be using the time, the approximate amount of time he or she will need, and a general description of the activity for which the time will be used. If the steward plans to leave the Employer's facilities to perform the representational activity, the supervisor must approve the location requested.

C. The Union will provide HRB's Workforce Relations Section with a list of its officers and stewards on an annual basis or when there is a change.

Section 3
Union Sponsored Training

Official time will not exceed 20 hours for each Union representative for up to a total of 19 representatives per year for the attendance of Union representatives at any training event conducted by the Union's National Office, provided that the content of the training is approved in advance by the Employer. Official time for reasonable travel to and from the conference for stewards will also be authorized consistent with law. Travel costs will be at the expense of the Union.

Section 4
Access to Facilities and Equipment

Except as otherwise set forth in this Article, the Employer will provide the Union with reasonable access to the Employer's facilities and equipment (including email) for the purposes of conducting representational activities.

Section 5
Offices

A. On an as available basis, the Employer will provide the Union with a standard, non-supervisory sized window office, and a second office to use as a conference room, in lieu of one (1) of the current Union offices on the third (3rd) floor at the CFTC's Washington, DC headquarters building. The Union may also reserve a conference room when necessary and available through the CFTC procedures at the Central Regional Office or other locations.

B. The Washington, DC Union office will ensure the Union privacy and will be equipped with a locking door, a desk, an ID telephone with voicemail (and TTY, upon identification of a qualified bargaining unit employee), a computer with internet and Employer intranet access, one (1) color laser printer, four (4) office chairs, and, if requested, a three (3) or four (4) drawer locking file cabinet, one (1) bookcase, one (1) table, and one (1) bulletin board.

Section 6
Policies and CBA Access

The Employer will provide the Chapter President with available web links to all operating policies, procedures, and guidelines applicable to bargaining unit employees as well as any other Employer directives issued to all employees in the last two (2) years regarding personnel policies or practices.

Section 7
Bulletin Boards

The Employer will provide to the Union exclusive use of at least one-quarter of each glass-enclosed bulletin board located in each pantry/kitchen and other space on each floor.

ARTICLE 47: DUES WITHHOLDING

Section 1
Voluntary Allotments

A. Eligible employees who are members of the Union may pay dues through the authorization of voluntary allotments from their compensation. To be eligible to make such voluntary allotments, and prior to any deduction being made, an employee must:

1. Be an employee of the bargaining unit covered by this Agreement;
2. Be a member in good standing in the Union;
3. Have voluntarily completed Standard Form 1187 (SF-1187) "Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues"; and
4. Have a regular net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues.

Section 2
Union Responsibilities

A. The Union will:

1. Inform and educate members of the voluntary nature of the system for the allotment of labor organization dues, including the conditions under which an employee may revoke the allotment;
2. Forward properly executed and certified SF-1187s and SF-1188s to the Employer on a timely basis when such forms are received by the Union;
3. Inform the designated official of the Employer of any changes in the dues amounts or the formula for membership dues; and
4. Provide the designated official of the Employer with the names and complete mailing addresses and changes thereto of officials who are responsible for certifying SF-1187s and to whom dues withholding information should be submitted.

Section 3
Employer Responsibilities

A. The Employer will:

1. Deduct and process voluntary allotments of dues and changes in dues upon certification from the Union National President in accordance with this Article. Changes in the dues amounts will be made within one (1) full pay period after notification by the Union;
2. Withhold authorized dues each pay period at no cost to the Union or the employee;
3. Start dues withholding no later than one (1) full pay period following receipt of a properly certified SF-1187;

4. Notify the Union when an employee who has submitted an SF-1187 is not eligible to enroll in the automatic dues withholding program because he or she is not an employee of the bargaining unit covered by this Agreement;
5. Prepare remittances and reports as follows:
    (a) Transmit to the Union the total amount deducted for all employees and total amount remitted to the Union;
    (b) Remittance will be made on a per pay period basis and transmitted at the end of the following pay period directly to the Administrative Controller, National Treasury Employees Union, 1750 H Street, N.W., Washington, DC 20006.
    (c) The Employer also will provide the following information, in Excel when possible, or in CVS (Comma Delimited), via electronic file transfer:
        i. Employees' names in alphabetical order by last name;
        ii. The last four (4) digits of Social Security Numbers, if available;
        iii. Grade & Step;
        iv. Division/Office;
        v. Adjusted Base Pay (including locality pay);
        vi. Pay Plan;
        vii. Total amount of dues withheld;
        viii. Pay period;
        ix. Pay period ending date;
        x. Duty city (four digit # field);
        xi. Duty state (two digit # field);
        xii. Duty county (three digit # field); and
        xiii. Identification of the labor organization, including the Union Chapter number.

B. On a quarterly basis, CFTC will provide the NTEU National President or his or her designee a list of all bargaining unit employees, including their names, position title, grade level, organizational component, Official Duty Station (city and state), CFTC e-mail address, and salary.

Section 4
Revocation

A. Revocation notices for employees who have had dues allotments in effect for more than one (1) year will be submitted to the National Capital Regional Human Resources payroll office during pay period 15 each year. The revocation will be effective within two (2) pay periods following submission to the HR Office. Revocations will become effective during pay period 18. Revocations may only be effected by submission of a completed SF-1188 that has been initialed by the Chapter President or his or her designee. If the SF-1188 is not initialed, the Employer shall return the SF-1188 to the employee and direct the employee to the proper Union official for initialing. To revoke such dues withholding, employees will have had dues withheld for at least one (1) year.

B. Revocation notices for employees who have not had dues allotments in effect for one (1) year will be submitted on or before the one (1) year anniversary date of their dues allotment. Revocations may only be effected by submission of a completed SF-1188 that has been initialed or signed by the Chapter President or her or his designee. If the SF-1188 is not initialed or signed, the Employer shall return the SF-1188 to the employee and direct the employee to the proper Union official for initialing. The SF-1188 will become effective the first full pay period after the employee's anniversary date.

C. The Employer agrees to reactivate the dues allotments in effect for any temporary or term employee who has a break in service of 30 days or less and is reemployed by the Employer within one (1) full pay period after the employee returns. The Employer shall reactivate the dues allotments in effect for employees who return to their permanent positions from details or temporary appointments in non-bargaining unit positions within one (1) full pay period after the employee returns.

D. Revocation due to loss of membership in good standing will be effective on the beginning of the first pay period after the date of receipt of notification by the Union to the Employer.

E. For termination due to separation or movement out of the bargaining unit, a final deduction will be made for that pay period in which the action is effective.

Section 5
Underpayments/Overpayments

A. Notice. When the Employer or Union receives information from any source of a dues deductions underpayment or overpayment, the Employer and/or Union shall immediately notify the Union Administrative Comptroller and/or HRB's Workforce Relations Section as applicable via email or in writing. The notification shall state the relevant facts giving rise to the belief that dues have been underpaid or overpaid, provide the name of the affected employee(s), and enumerate the specific pay periods and amounts of dues that were not withheld. The Parties have up to 15 business days to verify the amounts in question.

B. Overpayments. When the Union has actual notice of receipt of an overpayment, or constructive notice through receipt of the quarterly report in Section 3.B of this Article, such notice gives rise to an affirmative duty on the part of the Union to remit that amount by check to the Employer, except when such overpayment is $200 or less per quarter and was received by the Union in good faith and without fraud or misrepresentation. Repayment shall occur within three (3) pay periods of notice of the overpayment. The Union will provide the Employer with written confirmation of the payment, including the total payment remitted.

C. Underpayments. When the Employer has notice of an underpayment and a corresponding written request from the Union for transmittal of underpaid dues, the Employer

will transmit the verified amount of the underpayment to the Union within three (3) pay periods of the Union's request for payment. The Employer will provide the Union with written confirmation of payment, including the total payment remitted and the name of the affected bargaining unit employee, if applicable.

Section 6
Employee Information

A. The Employer will, within one (1) pay period of the effective date of this Agreement, commence providing National NTEU, as the exclusive representative of employees in the bargaining unit, with the data set forth in Section 6.B of this Article.

B. Each bargaining unit employee's:

1. Name, Position Title, Grade and Pay plan;
2. Division, Unit and address of their Official Duty Station;
3. Last four (4) digits of the Social Security Number;
4. Annual salary and locality pay area;
5. Bi-weekly pay amount;
6. Appointment Type; and
7. Work schedule (full or part-time).

C. Such information will be contained in an Excel spreadsheet and transmitted to National NTEU via an electronic encrypted format within three (3) days of the end of each CFTC pay period.

ARTICLE 48: DURATION AND TERMINATION

Section 1
Effective Date

This Agreement will become effective 31 calendar days from execution (signing) or upon approval by the Employer consistent with 5 U.S.C. § 7114(c), whichever occurs first.

Section 2
Duration

A. This Agreement shall remain in effect for a period of three (3) years from its effective date and shall be automatically renewable for additional one (1) year periods unless either Party notifies the other Party, in writing, at least 60 calendar days, but not more than 120 calendar days prior to the expiration date of its intention to re-open or terminate this Agreement.

B. When notice of desire to re-open or terminate is given, the Parties shall confer within ten (10) calendar days to schedule a meeting for the purpose of negotiating ground rules for the conduct of negotiations on a new Agreement; this meeting should occur no later than 30 calendar days prior to the expiration date of this Agreement. If negotiations on a new Agreement are not concluded prior to the expiration date, this Agreement shall continue in full force until a new Agreement has been approved.

Section 3
Statute

Nothing in this Agreement shall serve as a waiver by either Party of the right to negotiate over matters required by any amendment or modification to the Federal Service Labor-Management Relations Statute. Such bargaining may be initiated at any time after 60 calendar days from the effective date of the statutory change.