

# 2018 COUNSEL-NTEU AGREEMENT



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## **PREAMBLE**

WHEREAS the Office of Chief Counsel, Internal Revenue Service (Office), and the National Treasury Employees Union (NTEU) recognize that the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions that affect them safeguards the public interest, contributes to the effective conduct of public business, and facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment; and

WHEREAS the Office and NTEU recognize that the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government; and

WHEREAS the Office and NTEU recognize that a mutual commitment to cooperation promotes both the efficiency of the Office's operations and the well-being of its employees; and

WHEREAS the Office and NTEU agree that the dignity of employees will be respected in the implementation and application of this Agreement as well as related personnel policies and practices;

NOW THEREFORE the Office and NTEU hereby agree as follows:

## **ARTICLE 1 - COVERAGE AND GENERAL PROVISIONS**

### **Section 1**

This Agreement covers all professional and nonprofessional employees of the Office of Chief Counsel, in the National Office (Headquarters) and in the field, excluding all management officials, supervisors, and employees described in 5 USC § 7112(b)(2), (3), (4), (6), and (7).

### **Section 2**

Unless otherwise expressly provided, reference to days in this Agreement means calendar days.

## **ARTICLE 2 - PRECEDENCE OF LAW AND REGULATION**

### **Section 1**

In the administration of all matters covered by this Agreement, the parties are governed by the following: existing or future laws; Government-wide rules or regulations in effect upon the effective date of this Agreement; Department of Treasury regulations that do not conflict with this Agreement; and Government-wide rules or regulations issued after the effective date of this Agreement that do not conflict with this Agreement.

### **Section 2**

To the extent that provisions of the Chief Counsel Directives Manual (CCDM), the Internal Revenue Manual (IRM), and General Counsel Directives are in specific conflict with this Agreement, the provisions of this Agreement will govern.

## **ARTICLE 3 - MERIT SYSTEM PRINCIPLES AND PROTECTIONS AGAINST PROHIBITED PERSONNEL PRACTICES**

### **Section 1**

- A. The parties mutually recognize that personnel management should be implemented consistent with the following merit system principles:
1. Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society. Selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills after fair and open competition that assures all receive equal opportunity;
  2. All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or disabling condition, and with proper regard for their privacy and constitutional rights;
  3. Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance;
  4. All employees should maintain high standards of integrity, conduct, and concern for the public interest;
  5. The Federal work force should be used efficiently and effectively;
  6. Employees should be retained on the basis of the adequacy of their

performance. Inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards;

7. Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance;
8. Employees should be –
  - (a) Protected against arbitrary action, personal favoritism, or coercion for partisan political purposes; and
  - (b) Prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election; and
9. Employees should be protected against reprisal for the lawful disclosure of information that they reasonably believe evidences –
  - (a) A violation of any law, rule, or regulation; or
  - (b) Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

## Section 2

- A. For the purpose of this Article, prohibited personnel practice means any action described in Section 3, below.
- B. For the purpose of this Article, “personnel action” means:

1. An appointment;

2. A promotion;
3. An action under Title 5, Chapter 75, or any other disciplinary or corrective action;
4. A detail, transfer, or reassignment;
5. A reinstatement;
6. A restoration;
7. A re-employment;
8. A performance evaluation under Title 5, Chapter 43;
9. A decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this Section;
10. A decision to order psychiatric testing or examination; and
11. Any other significant change in duties, responsibilities, or working conditions.

## Section 3

- A. The Office will not:

1. Discriminate for or against any employee or applicant for employment:
  - (a) On the basis of race, color, religion, sex, or national origin as prohibited under Section 717 of the Civil Rights Act of 1964;
  - (b) On the basis of age, as prohibited under Sections 12 and 15 of the Age Discrimination in Employment Act of 1967;

## ARTICLE 3

- (c) On the basis of sex, as prohibited under Section 6(d) of the Fair Labor Standards Act of 1938;
  - (d) On the basis of disabling condition, as prohibited under Section 501 of the Rehabilitation Act of 1973;
  - (e) On the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation; or
  - (f) On the basis of sexual orientation;
2. Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of:
    - (a) An evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or
    - (b) An evaluation of the character, loyalty, or suitability of such individual;
  3. Coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;
  4. Deceive or willfully obstruct any person with respect to such person's right to compete for employment;
  5. Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;
  6. Grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;
  7. Appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in Title 5 of the United States Code) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in Title 5 of the United States Code) or over which such employee exercises jurisdiction or control as such an official;
  8. Take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of:
    - (a) Any disclosure of information by an employee or applicant that the employee or applicant reasonably believes evidences -
      - (i) A violation of any law, rule, or regulation; or
      - (ii) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically required by

Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

- (b) Any disclosure to the Special Counsel or to the Inspector General of an agency, or to another employee designated by the head of the agency to receive such disclosures, of information that the employee or applicant reasonably believes evidences –
  - (i) A violation of any law, rule, or regulation; or
  - (ii) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;
- 9. Take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of:
  - (a) The exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;
  - (b) Testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (a);
  - (c) Cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or
  - (d) Refusing to obey an order that would require the individual to violate a law.

- 10. Discriminate for or against an employee or applicant for employment on the basis of conduct that does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this Subsection will prohibit the Office from taking into account in determining suitability or fitness any conviction of the employee or applicant from any crime under the laws of any State, or of the District of Columbia, or of the United States;
- 11. (a) Knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or
  - (b) Knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement or;
- 12. Take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in Section 2301 of Title 5.

#### **Section 4**

- A. 1. With the exception of matters covered under Subsection 3(A)(1)(f), an employee aggrieved under Subsection 3(A)(1), above, may raise the matter under a statutory procedure or under Article 33 (Employee Grievance Procedure), but not both.
- 2. Employees will be deemed to have exercised their option under this Subsection at such time as they



## ARTICLE 4

timely file a formal written EEO complaint or timely file a written grievance under the provisions of Article 33 (Employee Grievance Procedure), whichever occurs first.

- B. 1. An employee aggrieved under Subsection 3(A)(1)(f) may raise a complaint of discrimination under either the special procedures established by the Department of Treasury for processing discrimination complaints based on sexual orientation or under Article 33 (Employee Grievance Procedure), but not both.
2. Employees will be deemed to have exercised their option under this Subsection at such time as they timely file a formal written EEO complaint or timely file a written grievance under the provisions of Article 33 (Employee Grievance Procedure), whichever occurs first.
3. Claims of discrimination based upon sexual orientation filed under Article 33 (Employee Grievance Procedure) shall be limited to claims that the Office either took or failed to take a personnel action on the basis of the employee's sexual orientation. A personnel action has the same meaning as defined in Section 2 above.
- C. An employee aggrieved under Subsections 3(A)(2) through 3(A)(12) above may raise the matter under Article 33 (Employee Grievance Procedure).

### Section 5

In reviewing grievances on the provisions of this Article, arbitrators will apply the same standards of evidence and burden of proof as those applied by the Merit Systems Protection Board, with the exception that grievances filed under Section 4(B)

concerning sexual orientation discrimination will be controlled by the same burdens of proof that apply in discrimination complaints filed under Title VII of the Civil Rights Act of 1964.

## **ARTICLE 4 - EMPLOYEE RIGHTS**

### **PART I - RIGHTS RELATED TO NTEU**

#### **Section 1 - Right to Representation**

- A. 1. Raising complaints or grievances in good faith by employees will not cause any reflection on their standing with their supervisors or on their loyalty or desirability to the organization. Employees and NTEU representatives who have relevant information concerning any matter for which remedial relief is available under this Agreement or other statutory/regulatory procedure pertaining to personnel/employment matters involving Office bargaining unit employees will, in seeking resolution of such matters, be assured freedom from restraint, interference, coercion, discrimination, intimidation or reprisal.
2. The Office will not restrain, interfere, coerce, retaliate or discriminate against any employees in the exercise of their right to designate a NTEU representative for the purpose of representing to the Office any matter of concern over the interpretation or application of this Agreement or of any law, rule or regulation pertaining to personnel matters or of representing Office bargaining unit employees with respect to personnel/employment matters before any Government agency or official other than the Office. This right does not extend to acting as a NTEU representative where such representation would result in a conflict or apparent

conflict of interest, or would otherwise be incompatible with law, or with the official duties of the employee.

B. The Office retains the right to challenge a NTEU representative in accordance with the procedures of the third-party adjudicative bodies. The Office and NTEU agree to abide by the determinations of the adjudicative bodies, subject to any right of appeal, regarding the right of a NTEU representative to serve as a representative in a particular case. The parties recognize that this Section grants such employees or NTEU representatives no time for performing duties under the provisions of this Agreement. This Section should be read in conjunction with Article 39 (NTEU Representatives and Official Time), Section 3. Grievances alleging violations of Section (1)(A) above may be filed at the second step of the grievance procedure.

C. Discussions (including email, telephone, and fax communications), between a NTEU representative and an employee seeking counsel or advice regarding non-criminal investigations are confidential absent the Office's overriding need for the information. The Office agrees not to solicit information from any NTEU representative or any bargaining unit employee concerning the nature of such confidential discussions except as noted above.

## **Section 2 - NTEU Membership**

A. 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.

B. Nothing in this Agreement or the law requires NTEU to represent any employee in proposed disciplinary actions, proposed adverse actions or performance-based removals, or before the Merit Systems Protection Board, the Equal Employment Opportunity Commission, the Office of Workers Compensation Programs, the Comptroller General, or in any other appeal procedure created by the statute.

## **Section 3 - NTEU Participation**

Except as otherwise expressly provided in this Agreement or statute, the right to assist a labor organization extends to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including presentation of views to officials of the Executive Branch, the Congress, or other appropriate authority.

## **Section 4 - Right to Representation at All Stages of EEO Complaint Process**

Nothing in this Agreement shall prohibit an employee from being represented by a NTEU representative at any stage of the EEO complaint process including the counseling stage.

## **PART II - INVESTIGATIONS**

### **Section 1**

The Office will issue a notice to all employees on a semiannual basis that states, in part, the following:

A. Employees have the right to be represented by NTEU in an examination in connection with an investigation by the Office, TIGTA, or other representative of the Office, if:

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

## ARTICLE 4

2. The employee requests such representation.
- B. Employees may exercise this right if the above conditions are met whether the employee is the subject of the investigation or is a third party witness. The Office fully supports the aforementioned right.
- C. The current procedures for TIGTA investigations are posted on the Office's intranet (Labor and Employee Relations home page).

### Section 2 - Management Investigations

- A. 1. Any employee who is the subject of a conduct investigation by Counsel management (a Counsel supervisor, manager, or other management representative, e.g., Labor and Employee Relations or General Legal Services) and who reasonably believes that the interview may result in disciplinary action has the right to representation by a person designated by NTEU.
2. At the time the employee is contacted and told such an interview will occur, the employee will be provided the following information:
  - (a) The general subject of the interview;
  - (b) That he or she is the subject of the conduct interview;
  - (c) That if the employee reasonably believes that the interview may result in disciplinary action, the employee is entitled to representation during the interview by a person designated by NTEU; and
  - (d) That the interview will be scheduled to allow the employee an opportunity to seek the

counsel of a NTEU representative before the interview and/or during the interview, but that request for representation will not unduly delay the interview (e.g., the employee will generally be given twenty-four (24) hours to seek NTEU advice).

3. If the interview is initiated by the employee, or if the employee is being interviewed as a third party witness, there is no obligation to inform the employee of the right to NTEU representation before beginning the interview. However, if during the course of the interview, based on the questions asked and answers given by the employee, an employee reasonably believes that discipline to the employee could result from the interview, the employee has the right to stop the interview and request representation before the interview continues.
4. If a bargaining unit employee is being interviewed as a third party witness in connection with an arbitration hearing involving another bargaining unit employee, NTEU will be informed of the time and place of the interview a reasonable period of time in advance of the interview and be given an opportunity to be present.
5. If an employee is represented in an interview and the general subject (see Subsection 2(a) above) of the interview changes, the employee and representative will, upon request, be given a reasonable period of time to confer.
6. If an employee appears for a scheduled interview without representation, but during the course of the interview reasonably believes that the interview may result in

disciplinary action and requests representation, the employee will receive a reasonable period of time to secure such representation.

- B. If in cases solely involving administrative misconduct the employee refuses to respond to questions, the employee shall be advised of the following:

“When directed to do so by Counsel management, employees must testify or respond to questions in matters of official interest. Employees must give such testimony, or respond to questions truthfully when required or requested to do so. Your failure to respond or answer truthfully as required may result in severe discipline including removal.”

- C. 1. Although the Office does not conduct criminal investigations, in an interview by Counsel management involving possible criminal conduct where prosecution has been declined by appropriate authority, at the beginning of the interview the employee shall be given a statement of the Kalkines warning. The warning shall contain the following language:

“You are here to be asked questions pertaining to your employment with the Office of Chief Counsel and the duties that you perform for the Office. You have the option to remain silent, although you may be subject to removal from your employment if you fail to answer material and relevant questions relating to the performance of your duties as an employee. You are further advised that the answers you may give to the questions propounded to you at this interview, or any information or evidence which is gained by reason of your answers, may not be used against you in a

criminal proceeding except that you may be subject to a criminal prosecution for any false answer that you may give.”

2. When employees are given the Kalkines warning they shall be given IRS Form 8112 (Appendix 4-1).
- D. When the person being interviewed is accompanied by a representative furnished by NTEU, the role of the representative includes, but is not limited to, the following rights:
1. To clarify the questions;
  2. To clarify the answers;
  3. To assist the employee in providing favorable or extenuating facts;
  4. To suggest other employees who have knowledge of relevant facts; and
  5. To advise the employee.

However, a representative may not transform the interview into an adversary contest.

- E. If the Office fails to permit the subject of an investigatory interview to have a NTEU representative during the interview after the subject employee requested such representation, the Office will not use any information gained during that interview in any action against the employee. NTEU and/or the employee will also have the right to ask for a re-interview where correct procedures are used. The Office also retains the right to re-interview in such cases.

### **Section 3 - TIGTA Investigations**

- A. Employees have a statutory right to NTEU representation in any examination by the Treasury Inspector

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General for Tax Administration (TIGTA), or the Treasury Inspector General, or other representative of the Office in connection with an investigation if:

1. The employee reasonably believes that the examination may result in disciplinary action against the employee; and
  2. The employee requests representation.
- B. The current procedures for TIGTA investigations will be posted on the Office's intranet (Labor and Employee Relations home page).
- C. If TIGTA denies NTEU representation to an employee who is entitled to such representation under 5 USC § 7114 (a)(2)(B) and who has requested such representation during an investigatory interview, the Office will not use any information gained during that interview in any action against the employee.

### Section 4 - Prior Arrests or Convictions

Employees shall not be required to disclose an arrest or conviction if a court has ordered the arrest or conviction expunged or purged from the employee's record before the time that the employee is required to answer any question relating to the arrest or conviction.

### Section 5 - Polygraphs

In the event any Office employee declines to undergo a polygraph examination, no adverse action may be taken based solely on that declination.

## PART III - EMPLOYEE – SUPERVISOR RELATIONS

### Section 1 - Employee – Supervisor Relationships

Relationships between employees and their supervisors should be mutually conducted in

a businesslike, courteous, respectful, and tactful manner.

### Section 2 - Management Inquiries

- A. The Office is entitled to require truthful answers from employees in response to questions in matters of official interest. An employee who fails to provide such answers is subject to disciplinary action, including removal. An employee may properly refuse to answer questions regarding matters in which the Office has no official interest.
- B. Employees must obey lawful orders from management officials in their chain of command. However, no employee will be subject to disciplinary or adverse action for refusing to obey an unlawful order. The employee also has the right to refuse to access a taxpayer's account not formally assigned to him or her unless he or she has been given a formal written order or notice that states on whose authority the access is being made.
- C. The Office recognizes the existence of certain employee rights under 29 CFR Part 1960, among them the right to be free from reprisal, including charge to leave, when employees decline to perform their assigned tasks because of reasonable beliefs that, under the circumstances, the tasks pose an imminent risk of death or serious bodily harm, coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures established by the Office.

### Section 3 - Professional Differences of Opinion

Employees will have the right to document any difference of opinion regarding their work. The employee may place materials reflecting the difference of opinion in the case file and also may submit such

materials as a rebuttal to the employee's next performance appraisal.

## **PART IV - MISCELLANEOUS RIGHTS**

### **Section 1- Voluntary Resignations**

- A. The questions of whether and on what date to resign are voluntary matters for each employee. When an employee is faced with the prospect of Office-initiated action such as termination or removal, the employee will have the right not to resign or, if the employee chooses, to make a resignation effective at any time before the effective date of the Office's action. In instances where the Office advises an employee to consider resigning in lieu of being terminated, and no NTEU representative is present during this meeting, the Office will also advise the employee that he or she may consult with a NTEU representative before making the decision.
- B. An employee may withdraw a resignation at any time before its effective date, provided the withdrawal is communicated to the Office in writing, and is received by the Office before it has made a commitment to fill the position of the resigning employee.

### **Section 2 - Work Environment**

- A. Both parties agree that there is an obligation on all employees and supervisors to have an environment free of discrimination based on race, gender, disability, religion, national origin, sexual preference or orientation, and free of sexual harassment.
- B. Further, employees who are HIV positive or have AIDS shall not be subject to discrimination with regard to any condition of employment.

## **Section 3 - Counseling Sessions**

When a counseling session includes a representative from Labor and Employee Relations, the employee will be given an opportunity to have a NTEU representative present.

## **Section 4 - Employee Rights Appendix**

A Statement of Basic Employee Rights appears in Appendix 4-2 of this Agreement. The Office will post the statement on all official bulletin boards and NTEU may post it on all of its bulletin boards and may discuss these rights in orientation sessions. The statement will be signed by the Office and NTEU.

## **PART V - PRIVACY-RELATED MATTERS**

### **Section 1 - VMS/Voice Mail**

- A. Each bargaining unit employee will be assigned a separate personal VMS or other voice mail system mail box that only he or she can access.
- B. Voice mail boxes that are provided for the exclusive use of NTEU will not be accessed or monitored by the Office except upon request of NTEU to provide maintenance and/or troubleshooting.
- C. The Office will not access or monitor messages from NTEU to bargaining unit employees.

### **Section 2 - Search of and Access to Employee Desks, Office Space, Electronic Files, Etc.**

- A. 1. Because the Office owns and administers the Office computer system, employees have no expectation of privacy in materials maintained on the Office computer system.
- 2. Employees will be reminded annually that any electronic information that



they do not wish to be subject to access should be removed from their work computer.

- B. None of the processes or procedures identified in this Section apply to searches or accesses related to criminal investigations.
- C.
  - 1. While the Office has the right to search (to investigate alleged workplace misconduct) or access (for non-investigatory purposes, such as to locate Office work-related files or documents, etc.) employee desks, immediate office space, files (both electronic and paper), communications including voice mail systems, computer disks, and related items, the Office agrees that such searches or accesses will only be conducted for legitimate work-related reasons.
  - 2. The parties to this Agreement recognize that not every entry into an employee's office or workstation is a search. For example, when an employee is not available, the employee's managers or the Office Manager (or equivalent) may access the employee's files, documents, or other work-related materials, as needed in the course of business.
  - 3. Personal items in offices or workspaces that employees do not wish to be viewed by individuals entering the office to retrieve files or other materials should be segregated and/or secured so as not to be visible or readily accessible. In order to identify such space, the Office will provide employees with labels that clearly state "Personal" which can be affixed to the outside of the drawer, closet, etc. The Office will ensure that a ready supply of these labels is maintained and after initial distribution will provide

additional or replacement labels to an employee upon request.

- D. Prior to an Office management official's search of an employee's electronic files, voice mailbox, or an employee's desk and/or immediate work area, the Office will first attempt to notify the employee that such a search is necessary. If the Office is unable to notify the employee or if circumstances make notification impractical, the Office will keep a written record explaining the search. The written record will include an explanation of why the employee could not be notified in advance, the work-related reasons why a search is necessary, and the names of the individuals who perform the search.
- E. If the search or access mentioned above in Subsection C above concerns a search or access of the files, communications, desk, or work space of a Counsel NTEU representative, the Office will take the following additional steps:
  - 1. NTEU items in offices or workspaces that NTEU officials and stewards do not wish to be viewed by individuals entering the office to retrieve files or other materials should be segregated and/or secured so as to not be visible or readily accessible. In order to identify such space, the Office will provide NTEU officials and stewards with labels that clearly state "NTEU" for this purpose. The Office will ensure that a supply of these labels are available after initial distribution and will provide additional or replacement labels upon request.
  - 2. If the Office is unable to notify the employee, the Office will notify another NTEU representative before a search or access is made.

3. The purpose of the additional contact explained above is so that, where possible under the circumstances and where it does not unduly delay a search, a designated NTEU representative may be present at any physical search of a desk, files, or work space of a NTEU representative in order to safeguard NTEU-related labor relations files and other records relating to official NTEU business.

## **ARTICLE 5 – WORK SCHEDULES**

### **Section 1 - Schedules Available**

- A. The basic work requirement is the number of hours in any work schedule, excluding overtime hours, an employee is required to work or otherwise account for by leave, credit hours, holiday hours, excused absence (such as administrative time), compensatory time off, or leave without pay (LWOP). The work requirement for part-time employees is the number of hours the employee must be present in a biweekly pay period.
- B. Subject to management approval under the standards set forth in Sections 6(A) and 6(B), all bargaining unit employees may work any of the following work schedules: (1) flexitour with credit hours; (2) a gliding schedule with credit hours; or (3) a 5-4/9 compressed work schedule (CWS).
- C. For any work schedule under this Agreement, management has the discretion to approve or deny a requested start time based on the standards set forth in Section 6(A) of this Article. An employee may request set start times that vary based on the days of the week. For example, an employee on a flexitour with credit hours work schedule may request to start work at 9:00 a.m. on Mondays, Wednesdays,

and Fridays, and at 7:00 a.m. on Tuesdays and Thursdays.

### **Section 2- Flexitour with Credit Hours**

- A. Flexitour with credit hours is a work schedule that requires employees to account for ten (10) workdays of eight (8) contiguous hours (excluding lunch) that contain the core hours during each biweekly pay period. Employees on flexitour are also eligible to earn and use credit hours. Employees working this schedule are allowed to request starting and stopping times within the flexible band. Once approved, the hours are fixed unless changed in accordance with the terms of this Article.
- B. "Credit hours" are any hours within the flexible band which are in excess of an employee's basic work requirement and which the employee works, with supervisory approval, so as to vary the length of the workweek or workday. For example, an employee who has worked eight (8) credit hours in a week may take one (1) day off later that week subject to management approval.
- C. Daily schedule changes on an ad hoc basis may be granted by management, subject to workload requirements.
- D. The flexible band and core hours for the Office are as follows:

|  |                         |
|--|-------------------------|
| Daily core hours:  | 10:00 a.m. to 3:00 p.m. |
| Flexible band during which the tour of duty may begin and end: | 6:30 a.m. to 6:30 p.m.  |
| Flexible band during which credit hours may be earned:         | 5:00 a.m. to 11:00 p.m. |

Core hours are the hours during the workday in which all employees must be working or on approved absence.



## ARTICLE 5

- E. With the work unit supervisor's approval, an employee may earn up to four (4) credit hours on each workday and up to twelve (12) credit hours on each non-workday.
- F. Credit hours may be worked non-contiguously to the employee's regular work schedule and may be worked at an alternate worksite. For example, an employee may work at the regular work site between 7:30 a.m. and 4:00 p.m. and return home and work two (2) credit hours between 8:00 p.m. and 10:00 p.m.
- G. Credit hours worked must ordinarily be requested and approved in advance. Supervisors will be reasonable in approving the earning of credit hours. Supervisors may give a blanket approval to earn credit hours up to a designated limit per day, week or pay period. Approval to earn credit hours may be granted orally. Once approved, the hours earned will be reported on an appropriate organizational form or transmittal (e.g. SF-71, e-mail, or fax) and recorded on SETR.
- H. Pursuant to statute, the number of credit hours that a full-time employee may carry from one pay period to the next pay period is twenty-four (24) hours. Part-time employees may earn credit hours on the same basis as full-time employees, but may carry over only 1/4 of the regularly scheduled hours in each biweekly pay period.
- I. Credit hours do not have to be used within a certain period and may be carried over into the next leave year.
- J. Credit hours may be earned and taken in fifteen (15) minute increments.
- K. The use of earned credit hours will be approved using the same standard used in Article 9 for approval of annual leave.
- L.
  1. Credit hours may be taken within the same pay period as the credit hours are earned. However, the credit hours must be earned before the credit hours can be taken. For example, an employee with no prior credit hour balance may not take two (2) credit hours on Monday and then attempt to earn the credit hours taken on Tuesday.
  2. A credit hour may not be used on the same day that it is earned. For example, an employee with no prior credit hour balance may not earn a credit hour in the morning and use that same credit hour later in the same day. Subject to prior approval from the Office, employees who have a credit hour balance may use credit hours on the same day that other credit hours are earned.
  3. Credit hours may be earned on the same day that an employee takes approved leave. Additionally, credit hours may be used in place of or in combination with other types of leave if the use of credit hours is approved in advance by the Office.

### **Section 3 - Gliding Schedule with Credit Hours**

- A. This is a type of flexible work schedule that requires employees to account for ten (10) workdays of eight (8) contiguous hours (excluding lunch) that contain the core hours during each biweekly pay period.
- B. Employees on this work schedule select a starting and stopping time each day within the flexible band established for a flexitour with credit hours work schedule. These employees may also "glide" their established starting and stopping daily times within the established flexible band for a flexitour with credit hours schedule. But, the "glide" will only be permitted for up to 30

minutes prior to or after the employee's established start time. For example, if an employee elects regular 8:00 a.m. start time on Mondays, the employee may begin work as early as 7:30 a.m. (thirty (30) minutes before the start of the tour of duty) or as late as 8:30 a.m. (thirty (30) minutes after the start of the tour of duty) on that workday without prior management approval.

- C. Employees on a gliding work schedule are eligible to earn and use credit hours under the rules provided for Section 2 of this Article.
- D. Employees on a gliding work schedule must notify their supervisor of their start time either prior to the start of their tour of duty or within fifteen (15) minutes after they have commenced working. Such notice may be communicated electronically (via email, telephone or Outlook calendar) or in person. If the communication is not originally made by e-mail, it will be confirmed by e-mail. Employees may also provide e-mail or other written notice in advance of their start time for the entire week.

#### **Section 4 – 5-4/9 Compressed Work Schedule**

- A. A 5-4/9 CWS is a fixed compressed schedule that requires employees to account for nine (9) workdays in each biweekly pay period. Eight (8) of those workdays are nine (9) hours long (excluding lunch) and one (1) workday is eight (8) hours long (excluding lunch).
- B. Employees electing a 5-4/9 fixed CWS may select a starting time no earlier than 6:00 a.m. The work schedule that results from such an election must include the daily core hours of 10:00 a.m. to 3:00 p.m. for each of the nine (9) workdays explained in (A) above. Core hours are the hours during the workday in which all employees must be working or on approved absence. An employee

on a 5-4/9 fixed CWS may not have a schedule which permits the employee to begin the workday earlier than 6:00 a.m. or to complete the workday later than 6:00 p.m.

- C. A 5-4/9 fixed compressed schedule may have different starting and ending times on different days.
- D. Employees electing a 5-4/9 CWS may not earn credit hours.
- E. Employees taking annual leave or sick leave on a regularly scheduled nine (9) hour day must be charged nine (9) hours leave for that day. However, if the employee has not yet worked their eight (8) hour day he or she may request to substitute that leave day for their eight (8) hour day. Such requests will generally be granted. If the employee's request is granted, the employee will only be charged eight (8) hours of leave for that day and will work nine (9) hours on the scheduled eight (8) hour day.
- F. Employees may only request to substitute one "regular day off" for another day off within the same pay period.
- G. If an employee's "off" day falls on an official holiday, the employee gets the preceding work day off.
- H. Daily schedule changes on an ad hoc basis may occasionally be granted by management, subject to workload requirements and provided that the work schedule does not begin before 6:00 a.m. or end later than 6:00 p.m.

#### **Section 5 – Grandfathered 4-10 Employees**

- A. Employees who are working a 4/10 schedule as of the effective date of this Agreement will continue to be "grandfathered." This means that, unless or until an employee initiates a permanent change to his or her position,

post of duty (POD), or work schedule, the employee may maintain his or her 4/10 schedule.

## **Section 6 - General Rules for all Work Schedules**

### **A. Standard for Approval of Individual's Work Schedule**

1. An employee's work schedule request (including a request for specific starting and stopping times) will be approved unless the request would interfere with the work requirements, such as office coverage or participation in collaborative projects. For example, participation may be denied or limited based on a need for direct supervision of an employee due to less than satisfactory performance or identified time and attendance issues.
2. If any employee's requested schedule must be disapproved, the reasons for disapproval will be discussed first with the affected employees, and the employees will be provided the opportunity to submit a new schedule before the finalization of work schedules for that work unit.

### **B. Standard for Discontinuing an Individual's Work Schedule**

1. Once an employee has worked on a particular work schedule (including a specific start and stop time), management has the right to discontinue that employee's participation on that particular work schedule, subject to the provisions in this Subsection.
2. The Office may move an employee off of a particular work schedule or adjust start and stop times if the employee's participation on that

schedule has caused a need for realignment of work, diminished level of services, insufficient office coverage, or increased costs. However, once the reason for the modification of the employee's work schedule and/or start and stop times has abated, the employee, upon request, will be able to resume his or her previous schedule and/or start and stop times consistent with this Article. This standard is not a Counsel-wide standard, but rather is applied based on a particular work unit or POD.

3. Before the Office takes any final action under this Section to move an individual employee off a particular work schedule or adjust that employee's start and stop times, the employee and the appropriate local Counsel steward and/or National Steward will be provided with the specific written reasons for the discontinuance and will be given an opportunity to propose an alternative plan to the Office.
4. If the Office nevertheless moves an employee off a work schedule or adjusts a start or stop time, the employee and /or NTEU may grieve this action.
5. Consistent and in conformity with 5 USC § 6131, if the Office determines to discontinue a particular flexible or compressed work schedule established under this Article after determining that the work schedule has had an adverse agency impact, it will provide advance notice to NTEU National, and bargain to the extent required by law.

### **C. General Provisions**

1. Approved work schedules shall be effective the next pay period after the date of approval, if not sooner.

2. Except for ad hoc changes to any work schedule, employees may request changes in their work schedules no more frequently than once during each calendar quarter, although nothing in this Agreement will preclude the work unit supervisor from permitting a temporary variance of the selected option if necessitated by emergency conditions. This emergency change would not count as the quarterly request to change.
3. Voluntary changes to work schedules will not be permitted if such changes would require other employees in the work unit to change their schedules involuntarily.
4. An employee who voluntarily changes work units will be required to choose a work schedule from among those available in the new work unit. Whenever possible, employees involuntarily reassigned between work units will be permitted to retain the work schedule they had before the reassignment.
5. No later than twelve (12) months after the effective date of this Agreement, all Counsel employees will (on a timely basis) enter their time (leave and attendance) into and electronically sign in SETR (or its successor) to record and verify the hours worked in a pay period. Employees will be provided with training before being required to input time into SETR. Once an employee begins entering their time into SETR, the employee will not be required to duplicate the entry of that time using any other process, including paper SETR entries.
6. Instructors and trainees will adhere to the established training schedule while involved in training classes and instructor preparation.
7. Employees in a travel status will adhere to the work schedules observed by employees in the office visited.
8. Employees appearing before any Court will adjust their work schedule to meet the schedule of the Court. Employees on a trial team will also adjust their work schedule to meet the reasonable needs of the trial team.

### **Section 7 - Educational Courses**

Upon an employee's request, the Office will, subject to workload requirements, establish a special tour of duty or work schedule to enable the employee to take educational courses in accordance with applicable rules and regulations.

### **Section 8 - Religious Observances**

- A. Upon advance request, the Office shall make every reasonable effort to grant, consistent with workload and staffing needs, an employee's request for annual leave for a workday which occurs on a religious holiday.
- B. An employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to engage in religious compensatory overtime work for time lost, without charge to leave, or may elect to take annual leave for meeting those religious requirements. To the extent such modifications in work schedules do not interfere with the efficient accomplishment of the Office's mission, the Office shall in each instance afford the employee the opportunity to work religious compensatory overtime and shall in each instance grant religious compensatory time off to an employee requesting such time off for religious observances when the employee's personal religious beliefs require that the employee abstain from work during

## ARTICLE 6

certain periods of the workday or workweek. Such requests will be granted unless no reasonable opportunities are foreseen during which the employee will be able to repay the compensatory time. Reasonable opportunities include the Office's effort to first assign work that is regularly assigned to the affected employee; if this work is not available, then to assign work which may include work not normally assigned, if the employee is qualified to perform such work. The following are types of situations envisioned above:

1. The work is such that productive work is not available on what are normally non-duty times; or
2. Significant security, utility, rental or other costs would be incurred if work at normal non-duty times were permitted.

The Office will not be prevented from directing an employee to work overtime even though the employee still has religious compensatory time outstanding.

- C. Employees must notify their supervisors of a desire to take religious compensatory time off for a religious observance. Notification should take place fifteen (15) days in advance, whenever possible.
- D. Religious compensatory time off may be earned and taken in fifteen (15) minute increments.
- E. Employees must request and receive approval for the earning of religious compensatory time in advance.
- F. Religious compensatory time shall be accounted for separately from other leave categories. A grant of religious compensatory time off will be repaid by the appropriate amount of religious compensatory overtime work within a

reasonable amount of time (generally one hundred-twenty (120) days). If within that time an appropriate time for repayment has not been mutually agreed upon, the Office may direct the employee to perform the religious compensatory overtime work at the Office's option. Religious compensatory time must be used within one (1) year from the date that it is earned.

- G. Employees who take advanced religious compensatory time off for religious observances may subsequently thereafter elect to charge that time to annual leave. If an employee elects to charge that time to annual leave their request will be granted. However, employees who take annual leave or leave without pay for religious holidays may not subsequently charge that to religious compensatory time off.

## **ARTICLE 6 - OUTSIDE EMPLOYMENT**

### **Section 1**

Employees may engage in outside employment or any other outside activity unless prohibited by the Office of Government Ethics (OGE) Standards of Ethical Conduct for Employees of the Executive Branch (including any amendments); Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury; Treasury Employee Rules of Conduct; or any other applicable Government-wide statutes or regulations and provisions of General Counsel Directive No. 6 incorporated herein.

### **Section 2**

- A. An employee shall not engage in outside employment or any other activity that conflicts with his or her official duty. An activity conflicts with an employee's official duties if:
  1. It would require the employee's disqualification from matters so



central or critical to the performance of the employee's official duties that the employee's ability to perform the duties of his or her position would be materially impaired; or

2. It is prohibited by statute or the Treasury Supplemental Standards of Ethical Conduct.

B. Employees may not engage in outside employment activities during their duty hours. Requests for annual leave, leave without pay, or use of accumulated credit hours for purposes of engaging in outside employment activities, like all such requests, will follow the leave procedures contained within the relevant Articles of this Agreement. Outside employment activities shall not be conducted on Government premises or involve the use of Government property and non-public information.

C. Employees may not:

1. Perform legal services involving Federal, State, or local tax matters;
2. Appear on behalf of any taxpayer as a representative before any Federal, State, or local government agency, in an action involving a tax matter, unless authorized to do so in writing;
3. Engage in accounting, or the use, analysis, and interpretation of financial records when such activity involves tax matters;
4. Engage in bookkeeping, the recording of transactions, or the record-making phase of accounting, when such activity is directly related to a tax determination;
5. Engage in the preparation of tax returns for compensation, gift, or favor;

6. Engage in the outside practice of law that might require the employee to take a position that is or appears to be in conflict with the interests of the Department of Treasury; or

7. Interpret any statute, regulation, or rule administered or issued by the Department of Treasury.

D. Office attorneys may not engage in pro bono activity that involves the representation of another before any agency of the United States or court of the United States in violation of 18 USC § 205; or that presents a conflict of interest under 18 USC § 208 or an appearance of a lack of impartiality; or otherwise violates the Standards of Ethical Conduct for Employees of the Executive Branch.

### Section 3

A. An employee who wishes to engage in outside employment (including pro bono legal services) shall request permission in writing prior to commencing the activity. The employee shall submit the written request to the employee's supervisor. The request shall provide, at a minimum, the following information:

1. The name, address, and telephone number of the prospective outside employer, if appropriate;
2. Any relationship of the proposed employer to the employee;
3. Any relationship of the proposed employer, if a business entity, to the Department of Treasury;
4. A description of the employee's anticipated duties;
5. The number of hours the employee expects to work (per day, week, or month, as applicable);

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6. The projected duration of the outside employment activity; and
  7. If the activity involves teaching, speaking, or writing for compensation, the nature and source of such compensation.
- B. The request and approval process described in Sections 3 and 4 do not apply to activities that are not considered to be employment or business. Examples of this include:
1. Membership and services (including holding of office) in civic, scout, religious, educational, fraternal, social, community, veteran, and charitable organizations, including corporations, where the office or services do not entail the management of a business type activity.
  2. Membership and services (including holding office) in NTEU.
  3. Membership and services (including holding office) in other federal employee organizations such as BIG, FEW, and Toastmasters.
  4. Membership and services (including holding office) in local offices of legally authorized credit unions. This includes paid bookkeeping work performed by the treasurer as well as part-time clerical or teller services.
  5. Membership in investment clubs, except that employees may not participate in investment club enterprises with official superiors.
  6. Services as a notary public.
  7. Unpaid bookkeeping, preparation of tax returns and other forms required by the IRS, and the maintenance of other records for civic, religious, educational, and charitable nonprofit organizations that are exempt from Federal income tax.
  8. Sales of articles to coworkers, friends, relatives, and neighbors not involving sales to, and solicitation of, the general public. Such sales may not be solicited or transacted during duty hours or in space occupied by Treasury offices.
  9. Rental of personally owned property, real or personal, provided that the employee is not engaged in a commercial business venture.
  10. Minor services and odd jobs for friends, relatives, or neighbors.
  11. Temporary [thirty (30) days or less] emergency assistance in a family enterprise in case of emergency, such as the death or serious illness of, or incapacitating accident to, a member of the family engaged in such business. Written permission is required if the need for such assistance continues beyond 30 calendar days or occurs more often than once in a calendar year.
  12. Participation in fund-raising drives as chairperson, or in other capacities, provided that such participation does not:
    - (a) Violate any ethical standard (e.g., conflicts of interest rules);
    - (b) Violate restrictions on political fund-raising;
    - (c) Violate restrictions on charitable fund-raising in the Federal workplace;
    - (d) Involve solicitation from a subordinate or a "prohibited source"; or

(e) Involve the use of the employee's official title. Some of these restrictions may not apply where an employee is authorized to raise funds as part of his official duties. (See 5 CFR § 2635.808).

13. Furnishing advice and assistance in the preparation of tax returns where there is no fee or other consideration.
14. Being custodian of one's child's property, or acting as an administrator, executor, guardian, or attorney-in-fact for a relative or friend provided that the duties do not entail operation of a business. Acceptance of an executor's or trustee's fee is permissible if no part of the fee is specifically identified as payment for tax return preparation.
15. Providing legal services, or acting in a fiduciary capacity, for the employee's parents, spouse, or child, or the estate of any such person, provided that such activities are consistent with applicable statutes, regulations and rules of professional responsibility or conduct, and would not require the employee's disqualification from matters so central or critical to the performance of his or her official duties that the ability of the employee to perform the duties of his or her position would be materially impaired.
16. Teaching, speaking or writing that does not relate to Department of Treasury programs or operations. Advance approval is required if the outside teaching, speaking, or writing activities, with or without compensation, relate to Department of Treasury programs or operations. (Employees should be aware of the restriction on certain compensated outside speaking, teaching, and

writing activities in Section 2635.807 of the OGE Standards of Ethical Conduct.).

#### **Section 4**

- A. The Office will approve or disapprove an employee's written request to engage in outside employment as soon as possible. The Office will approve or disapprove an employee's written request to engage in outside employment within fourteen (14) days of receipt of a fully completed request. If the Office fails to respond within fourteen (14) days, the employee may elect to either have a discussion with their Division Counsel/Associate Chief Counsel or designee regarding the matter, or file a grievance at the last step of the grievance procedure and receive expedited consideration.
- B. In the case of a disapproval, the Office will furnish the employee a written statement of its reasons for disapproval. Grievances concerning the Office's disapproval must be filed within thirty (30) days of the date of receipt of the disapproval and may be raised at the last step of the employee grievance procedure in Article 33 (Employee Grievance Procedure), all intervening steps having been waived. Any such grievance which is not resolved within the time limits set forth for the last step may be appealed to arbitration in accordance with the applicable provisions of this Agreement.

#### **Section 5**

- A. An attorney who has been granted approval for the outside practice of law will be subject to an annual reporting requirement, the purpose of which is to aid in the prevention of conflicts between such outside practice and the tax enforcement mission of the Office, and to determine whether the nature of such outside practice has changed



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since the time initial approval was granted. The employee shall include in his annual report the same information as identified in Section 3(A) of this Article and shall submit such report to his or her immediate supervisor.

- B. The Office maintains the right to revoke any approval for outside employment. Such approval will be revoked if the Office determines that:
1. A change of circumstances renders the employment inconsistent with applicable law, regulation, or the principles set forth in this Agreement;
  2. The outside employment is interfering with the employee's efficient performance of official duties or availability for duty; or
  3. The employee is impermissibly using duty hours and/or government property to engage in or further his or her outside employment.
- C. If the Office decides to revoke approval for any outside employment activities, the Office will inform the employee in writing of the reasons for its decision. Any revocation of approval will be subject to the provisions of Section 4(B), above, relating to initial disapprovals.

### Section 6

On a quarterly basis, the Office will furnish National NTEU sanitized copies of all disapprovals made under Section 4.

## **ARTICLE 7 - PART-TIME EMPLOYMENT**

### Section 1

- A. It is the policy of the Office of Chief Counsel to make part-time employment opportunities available to the maximum extent possible for non-management positions through GS-15, consistent with the Office's resources and mission

requirements. Such opportunities shall be made without discrimination for any non-merit reason such as race, color, religion, age, gender, national origin, political affiliation, disability, sexual orientation, marital or parental status. Opportunities for voluntary change from full-time to part-time employment shall be given to employees whenever feasible.

- B. The Office recognizes that part-time career employment and job-sharing may be particularly appropriate for the following classes of employees:
1. Older employees seeking gradual transition into retirement;
  2. Disabled individuals and others who require a reduced workweek;
  3. Parents who must balance family responsibilities with the need for additional income; and
  4. Students who must finance their own education and training.

### Section 2

- A. For the purposes of this Article, "tour of duty" means the hours of a day and the days of an administrative workweek that constitutes an employee's regularly scheduled administrative workweek.
- B. To be considered part-time for purposes of this Article, an employee must have a regularly scheduled tour of duty, set in advance, of at least sixteen (16) hours but not more than thirty-two (32) hours in each administrative workweek except as provided in Sections 4(A) (2) and 4(B) below.

### Section 3 – Process for Requesting Part-Time Employment

- A. An employee may, at any time, make a written request for conversion to part-time employment.
- B. An employee making a request to convert to a part-time schedule or a job-

sharing position must have an annual appraisal of at least "Fully Successful" at the time of his or her application. If the employee has worked more than twelve (12) months and does not have an appraisal, he or she will be assumed to be "Fully Successful" for the purposes of this Article. Generally, if an employee is on a performance improvement plan, he or she is not considered to be fully successful for purposes of making a request to convert to part-time or job-sharing. However, these requirements may be waived where performance issues would be ameliorated by a reduced work schedule or for purposes of reasonable accommodation.

- C. The Office will grant or deny such requests consistent with the principles described in Section 1 above and if consistent with workload, staffing and budget requirements. Where a request is not granted, the Office will provide the requesting employee with a written explanation for the denial and will provide an opportunity for discussion of the denial if requested.
- D. If a request is denied because management believes full-time coverage is essential, and it is also concluded by management that two (2) employees can effectively provide such coverage, then the Office will inquire internally to try to find a part-time employee to provide complete coverage. The requesting employee may also attempt to find a job-sharing partner, and the Office will share applicants who have identified an interest in part-time employment with the affected manager. Nothing in this Section will prevent the Office from selecting a job-sharing partner from any appropriate source.
- E. In the event one of the job-sharing partners vacates the position, and the Office determines that full coverage of the position is necessary, the Office shall first ask the remaining partner if he

or she desires to convert to full-time. If the employee declines, the Office shall attempt to locate a job-sharing partner. On an interim basis, the Office may require a part-time employee to convert to a full-time schedule.

- F. If the Office determines that it cannot approve a request for part-time because it has received more requests for part-time schedules or job-sharing positions than it can approve pursuant to the terms of Section 1 and 3(C) above, the Office shall:
  - 1. Send an email to part-time and job-sharing employees in the same Division or Associate Office, positions and post of duty (POD) as the requesting employee(s) asking if the incumbent part-time employees would be interested in returning to full-time work status either permanently or for a limited period of time.
  - 2. If a volunteer (in the same Division or Associate Office, position, and POD) returns to full-time status on a permanent basis then the part-time request will be granted.
  - 3. A volunteer may agree to return to full-time basis for a finite period of time in response to a solicitation under Section F(1) above, after which time the volunteer may, if otherwise still qualified, return to a part-time schedule. In that case the request will be granted for the same finite period of time.
  - 4. If the Office does not get any volunteers using the above process, the Office shall inform the requesting employee that his or her request has been "wait listed." The requesting employee may follow up on the status of the request every quarter.

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5. Upon request, the Office will send out an annual email request for volunteers under F(1) above whenever they have “wait listed” employees in the same Division or Associate Office and POD.
- G. The Office shall provide the following to National NTEU and the Counsel NTEU stewards for the PODs where part-time employees work:
1. Within sixty (60) days of the execution of this Agreement, a list of all part-time bargaining unit employees. This list shall include the names of the employees, job title, series, grade, and post of duty.
  2. Copies of any denials of part-time schedules/job-sharing and solicitations made pursuant to Section 3(F) above at any time from September 1, 2011 to the date of implementation of this Agreement.
- B. An increase of a PTCA employee’s tour of duty above thirty-two (32) hours per week or sixty-four (64) hours per pay period is not permitted for more than two (2) consecutive pay periods.
- C. A part-time schedule with a tour of duty of six (6) hours or less in a day does not include a lunch period for that day. Employees on part-time schedules who participate in office lunches or holiday parties will be granted the same amount of administrative time as full-time employees participating in those activities if they are otherwise in duty status.
- D. 1. The Office will not abolish any position occupied by an employee in order to make the duties of such a position available to be performed on a part-time career employment basis.
2. Subsection 1, above, does not preclude the Office from permitting a full-time employee from voluntarily changing to a part-time work schedule.

### Section 4 – Miscellaneous Provisions

- A. Except as provided in the Federal Employees Part-Time Career Employment Act of 1978 (PTCA) and Subsection B below:
1. The tour of duty for a PTCA employee will be no less than sixteen (16) and no more than thirty-two (32) hours per week;
  2. The tour of duty for a PTCA employee on an alternative work schedule may be set on the basis of thirty-two (32) to sixty-four (64) hours per pay period, but must include at least one (1) hour in each administrative workweek; and
  3. A PTCA employee’s tour of duty will be documented on a SF-50, Notification of Personnel Action.
- E. Any person who is employed on a full-time basis will not be required to accept part-time employment as a condition of continued employment.
- F. Part-time employees receive service credit for each calendar year worked (regardless of tour of duty) in accordance with applicable law and regulations.
- G. The Chief Counsel intranet will contain a link to the OPM page that explains details regarding part-time schedules and leave, retirement, and other benefits. The Chief Counsel intranet will also include a name of the Office’s point of contact who can answer any questions concerning part-time employment and job-sharing, including the impact of part-time employment on:

pay, benefits, retirement, reduction in force (RIF), health and life insurance, promotion, within-grade increases, career tenure, completion of probationary period, leave accrual rate, and time-in-grade calculation for promotion. The Office shall annually publicize the existence of this intranet link and the Office's part-time and job-sharing program.

- H. A part-time employee will receive holiday pay only if he or she is regularly scheduled to work on that day and only for those hours regularly scheduled as work.
- I. A part-time employee regularly scheduled to work on the "in lieu of" holidays of full-time employees will receive administrative leave for the hours which he or she would have normally worked on those days.
- J. Although an employee who accepts a part-time position has no right to return to a full-time position, the Office will grant the request if consistent with workload, staffing and budget requirements, and if the employee's most recent performance rating of record is fully successful or better. Such employees will be returned to a full-time schedule in the same or similar position at the same grade and step.
- K. The Office will ensure that its staffing/budget models and allocations will not create any disincentive to part-time employment opportunities.

## **Section 5 - Office-Sharing for Part-Time Employees**

- A. Field Employees: An employee on a part-time schedule with a regularly scheduled tour of duty of forty-eight (48) hours or less during the bi-weekly pay period in a field office may be required to give up or share his or her private office under certain situations. If the

Office decides that it is necessary to require an employee in a field office working this amount of part-time hours to give up or share his or her private office, the Office will first give notice to National NTEU and the impacted employees and will, to the extent required by law, do impact and implementation bargaining before there are any space changes.

- B. National Office Employees: Employees on a part-time schedule of forty-eight (48) hours or less in a bi-weekly pay period may be required to sit in a doubled office.
  - 1. Employees on part-time schedules as of the effective date of the Agreement – Employees who will be required to sit in a doubled office will receive at least fourteen (14) calendar days advance written notice of any such requirement. If and when such notice is given, the terms set forth in the October 28, 2014 MOU on Flexiplace Office Sharing in the National Office will apply. A copy of the MOU is attached in Appendix 54-1 of this Agreement.
  - 2. Employees who request part-time after the effective date of the Agreement – Assignment to a double office may occur as part of the approval process for an employee requesting part-time employment. All other terms set forth in the October 28, 2014 MOU on Flexiplace Office Sharing in the National Office will apply.

## **ARTICLE 8 - HEALTH AND SAFETY**

### **Section 1**

- A. The Office will, to the extent of its authority and consistent with the applicable requirements of Title 29 of the Code of Federal Regulations and applicable GSA standards, provide and maintain safe and healthful working

## ARTICLE 8

conditions for all employees, provide places of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm and ensure that all work areas are free of structural, environmental and biological hazards. NTEU will cooperate to this end and will encourage all employees to work in a safe manner.

- B. The Office will also endeavor to provide work areas with adequate lighting, ventilation, and temperature controls.
- C. Whenever it becomes necessary to remove an employee from a work area because of conditions in the work area that pose a threat to the employee's health or physical safety, including serious or potentially deadly disease or similar conditions present in the building environment, the Office will make a reasonable effort to find a location for that employee elsewhere within the employee's commuting area. If the Office determines there is no appropriate location within the employee's commuting area, the Office will consider alternatives such as telework.
- D. The Office will designate a safety officer for each building housing bargaining unit employees. Employees may report any hazardous or unsafe conditions to the safety officer. The Office will initiate prompt and appropriate action to correct any unsafe working conditions so reported. The safety officer will promptly brief NTEU about the handling and disposition of any reported hazards or unsafe working conditions.
- E. When the Office discovers a structural defect, a biological or environmental hazard, or a violation of Occupational Safety and Health Administration (OSHA) standards, it will as soon as practicable notify the designated NTEU

representative and the affected employees of that condition.

- F. After notifying the appropriate authorities, the Office will, unless otherwise advised and/or directed by competent authority, promptly notify the designated NTEU representative of any bomb threat, biological threat, or terrorist threat. The notice will include an explanation for evacuating or not evacuating the building. The Office will promptly inform that designated NTEU representative of specific reasons for all building evacuations, except for scheduled fire drills.
- G. The Office will designate floor captains (one for each floor in each building) housing bargaining unit employees. The Office and NTEU at the local level may agree to increase the number of floor captains or other safety employees. Floor captains will be responsible for ensuring that employees follow the appropriate procedures during evacuation. Floor captains will receive official time for all necessary training and meetings.
- H. The Office will provide to each designated representative an updated list of the name(s), room number(s), and telephone number(s) of the designated safety officer(s) for each building. The Office will provide to the designated NTEU representative an updated list of the name(s), room number(s), and telephone number(s) of the designated captains. The Office will also maintain an updated posting of designated safety officers and designated floor captains on all bulletin boards.
- I. The Office will promptly forward to all bargaining unit employees in the affected post of duty any health or safety memos/notifications received from IRS, GSA or any other government entity or building management authority.



## Section 2

- A. The Office will take steps on at least an annual basis to ensure that employees are familiar with the proper procedures for leaving the work areas during emergency situations, including terrorist attacks and other violent incidents. When such emergencies occur, the Office shall take all steps necessary to expeditiously and safely evacuate the employees. Where no current building evacuation plan exists, the Office will also devise a plan for each building with bargaining unit employees for responding to emergencies, including specific procedures on evacuating disabled employees. In devising these plans, the Office will solicit input from NTEU and will provide NTEU with copies of all plans annually.
- B. Information about how to recognize and respond to potentially hazardous letters and parcels will be posted on the Office's intranet. The Office will also annually publicize this information.

## Section 3

- A. The Office will, to the extent of its authority, participate in both the IRS National Safety Advisory Committee and IRS Safety Advisory Committee for the National Office. NTEU may designate two (2) representatives to serve on each committee. Employees designated by NTEU to participate in these committees will be allowed administrative time to travel and participate, as well as travel expenses, if any (only local travel expenses will be paid for the NTEU representatives on the National Office committee).
- B. The Office and NTEU may also participate in any currently existing or future IRS or other safety committees in a post of duty.

- C. At NTEU's request, the Office and NTEU at the local level, may discuss local safety issues in each post of duty, and may jointly decide to establish a local safety committee.
- D. Up to two (2) NTEU representatives per post of duty who participate in any safety committees identified in B and C will be allowed administrative time to participate.

## Section 4

- A. Where IRS health facilities exist (or where the IRS employees are given access to other health facilities) within the commuting area of a post of duty, employees may take advantage of all services offered by the facilities. These services may include cancer detection information if offered by the IRS health facilities or other health facilities accessed by the IRS.
- B. If the IRS health facility located at or near a post of duty (or another health facility at or near a post of duty that allows IRS employees use of the facility) provides periodic health and safety presentations on such topics as first aid, CPR, disaster preparedness, disease prevention (e.g., glaucoma, diabetes, colon cancer, etc.), sexually transmitted diseases, hypertension, weight control, smoking, and stress reduction or conducts health screenings (e.g., mammograms), consistent with workload and staffing needs, employees will be given administrative leave to participate in these programs or screenings.
- C. The Office agrees to provide first aid kits (one for each floor in each post of duty).
- D. The Office will make its facilities available at each post of duty for training classes in cardiopulmonary resuscitation (CPR) and basic first aid. Any such training classes must be held during

lunch or before/after work hours, unless the Office determines otherwise.

### Section 5

The Office will make free flu shots available annually on a voluntary basis to all employees as determined necessary by a competent Federal medical officer.

### Section 6

If an injured employee is sent to a medical facility for treatment, the Office and the affected employee agree to accept the determination made by competent medical authority at the facility regarding whether the employee should return to work.

### Section 7

Whenever it is necessary for an employee to leave work and return home because of incapacitation, the Office will assist in locating a willing employee to transport the employee home and will allow time to do so. The parties recognize that the Office's monetary, pecuniary, or tort liability is governed by the Comptroller General and Federal court decisions, and the Office assumes only that responsibility or liability that is allowable by law, regulation, or such decisions.

### Section 8

- A. The Office will make available to employees, electronically on or through the Office intranet, a copy of each of the following:
1. NTEU Optional Insurance plans;
  2. Open Season instructions;
  3. Information to Consider in Choosing a Health Plan (or its successor);
  4. Biweekly Health Benefit Rates (or equivalent); and

5. All Health Plans offered to employees.

- B. If an IRS or other Federal health fair is held in a particular post of duty, employees will be permitted up to one (1) hour annually to attend the health fair and will be reimbursed for any reasonable and necessary local travel expenses.

### Section 9

- A. The Employee Assistance Program (EAP) provides counseling and assistance services to employees who are experiencing problems related to alcohol, drug abuse or emotional problems. The parties recognize that alcoholism and drug abuse are treatable health problems and that job performance impairment may result from these illnesses. Therefore, employees suffering from and seeking treatment for these illnesses shall receive the same careful consideration (and reasonable accommodation where required by law) that are extended to employees having other illnesses or disabilities. Sick leave for the purpose of treatment, counseling, and rehabilitation shall be granted as in any other illness or health problem. Subject to workload and staffing concerns, LWOP for the purpose of treatment, counseling, and rehabilitation shall be granted as in any other illness or health problem. Employees may also use credit hours, annual leave, or compensatory time for this purpose. Employees are encouraged to seek treatment for these problems.
- B. The Office will annually publicize the existence of the Employee Assistance Program (EAP) and the benefits offered to employees through this program. The information provided to employees will emphasize the confidentiality of the EAP. Employees will also be specifically told that smoking cessation

programs are available through EAP. If the Office conducts an EAP seminar, workshop, conference, or training session to acquaint employees with the EAP and its operation, two (2) local NTEU representatives will be invited to attend. The NTEU representatives will be allowed administrative time to attend the sessions and will be reimbursed for any travel expenses incurred.

- C. No employee shall have his/her job security or promotion opportunities jeopardized by his/her request for counseling or referral services, except as specifically limited by law. The confidential nature of medical records of employees with problems will be strictly maintained in accordance with law.
- D. When the Office decides to refer an employee to the EAP, the Office will advise the employee that he/she has the right to have a NTEU representative present during the discussion regarding the EAP referral.
- E.
  1. The Office will afford reasonable accommodation to qualified disabled employees, unless the accommodation would impose an undue hardship on the operation of the Office's program.
  2. Employees seeking treatment for alcoholism and substance abuse will be offered rehabilitative assistance and the opportunity to take sick leave for treatment, if necessary, before any action for continuing performance problems relating to their addiction is taken.
- F. In the administration of personnel policies and decisions related to discipline and performance based actions, the Office acknowledges its obligations under applicable laws, rules, regulations and decisions of appropriate

judicial and administrative authorities to make necessary reasonable accommodation of all qualified disabled employees.

## **Section 10**

When employees are injured in the performance of their duties, they will be informed by the Office of the procedures for filing a claim for benefits under the Federal Employees Compensation Act (Pamphlet CA-550). Information will be provided about the type of benefits available, including specific reference to their option to file a claim for disability compensation if they are disabled for work. National NTEU will be annually sent copies of reports by the Office of all health and safety accidents that result in loss of time from the job. Names and/or other identifying information will be deleted to protect employee privacy. The Office will issue annual written notices to ensure that employees are aware that they are eligible for up to forty-five (45) days of continuation pay to cover any time off they must take in the first ninety (90) days after an injury.

## **Section 11**

When the Office receives specific advance notice that chemicals, paints, pesticides, or propane-powered equipment will be used in office space where bargaining unit employees are located and the Office has specific notice of an affected employee's sensitivity/allergy to such issues, the Office will notify the affected employee and the designated NTEU representative in advance.

## **Section 12**

- A. Consistent with workload demands, work breaks for employees performing repetitive tasks, including using computer screens continuously, will be scheduled so that such employees are provided a work break at intervals of approximately two (2) hours.



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- B. The Office will, consistent with its right to assign work, make a reasonable attempt to reassign tasks of employees who provide acceptable medical documentation that particular tasks presently assigned to the employees pose a health hazard to the employees.
- C. The Office will make a reasonable attempt, consistent with the right to assign work, to reassign any employee to duties that do not involve computer monitor screens, provided the employee provides acceptable medical documentation that such reassignment is advisable.
- D. At the request of an employee, the Office shall provide any employee who is required to use computer equipment on the job with wrist rests and anti-glare screens.
- E. As furniture is replaced, at the request of employees, the Office will endeavor to purchase ergonomically designed chairs and desks that meet commonly accepted industry standards, and that include adjustable keyboard trays and adjustable work surfaces large enough to accommodate the equipment, printers, manuals, and other equipment required by the Office.

### Section 13

- A. The Office will, through coordination with GSA when appropriate, periodically monitor asbestos, lead, PCB levels, and other biological and environmental hazards in the Office's buildings and water supply systems in buildings that have been identified by a qualified and certified safety, health or environmental professional as having the identified potential hazards. In the event such monitoring or other monitoring done by a competent source, reveals a level of exposure in excess of the standards established by the National Institute of Occupational Safety and Health

(NIOSH), the Office agrees to move exposed employees to work sites that do not have excessive exposure, and the Office further agrees that such employees will be paid hazardous duty or environmental differential pay, as appropriate, for periods of exposure to the extent allowed by law and regulation. For purposes of this Agreement, "period of exposure" means the time between the last reading indicating a level of exposure below the NIOSH standard and the time employees are removed from such exposure.

- B. Where the drinking water has been tested by competent authority (e.g., GSA, Federal, State or local regulators) and not found potable, the Office will provide bottled water to employees.
- C. To the extent the Office has the authority and consistent with GSA regulations, the air quality in areas in which bargaining unit employees are located will be checked regularly in buildings that have been identified by a qualified and certified safety, health or environmental professional as having potential hazards until the hazard is abated. The purpose of the testing is to ensure that the air quality meets OSHA standards.

- D. The reports identified in Subsections A, B, and C will be provided to the designated NTEU representative.

### Section 14

Where IRS fitness facilities exist at a post of duty (or where the IRS employees are given access to other fitness facilities at a post of duty), the Office will ensure that employees have access to those facilities. While any fees charged to individual employees for use of the fitness facilities are a personal expense to be paid by employees, the Office will ensure that Office employees are not charged a different

fee rate for access to IRS facilities than the fee rate that IRS employees are charged.

## Section 15

Employees required to work in dirty or dusty work areas will be provided, upon request, with masks, goggles, smocks and/or gloves. Employees with particular sensitivity to these working conditions that make working in these areas potentially hazardous will, to the extent practical, be excused from the assignment upon presentation of current medical certification. In general, employees will be provided with twenty-four (24) hours notice of their need to report to such work areas.

## Section 16

In the event that any current Counsel office relocates, it shall comply fully with GSA regulations.

# **ARTICLE 9 - ANNUAL LEAVE**

## Section 1

- A. It is understood by the Office and NTEU that an orderly scheduling of leave is to the mutual benefit of all parties. Employees will request annual leave as far in advance as possible. It is understood, however, that situations may arise that necessitate short notice. The Office shall make every reasonable effort to grant the employee's request for annual leave consistent with workload and staffing needs. Upon the employee's request, any denial of annual leave must be accompanied by a brief written statement of the reasons for the denial. Employees will earn annual leave in accordance with applicable statutes and regulations.
- B. Employees may use annual leave in fifteen (15) minute increments.
- C. The Office will grant leave in a manner that permits each employee, who so

wishes, to take at least two (2) consecutive weeks of annual leave each year.

- D. Employees whose leave balances on October 15 disclose that they have leave that is, or will become, "use or lose" will submit, on or before November 1, plans to use such leave. The Office shall make every reasonable effort to grant the employee's request for annual leave consistent with workload and staffing needs.
- E. In the event of a conflict in requests for scheduled annual leave, the Office will first allow employees to resolve the conflicts arising in the same occupation among themselves. If the employees are unable to resolve the conflict, the Office will resolve any remaining conflict regarding scheduled annual leave by granting preference to the employee with the most service as determined by enter on duty (EOD) date. An employee's approved annual leave will not be disapproved if an employee with an earlier EOD date subsequently requests leave for the same period. All decisions made pursuant to the procedures in this paragraph must be consistent with workload and staffing.
- F. In order to facilitate the making of personal plans by employees, the Office will respond to annual leave requests as soon as practicable but no later than seven (7) calendar days after the request is received.

## Section 2

- A. The granting of advanced annual leave by the Office is discretionary. Employees may be given advance annual leave when:
  - 1. They are eligible to earn annual leave;

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2. The employee has served more than ninety (90) days in their current appointment;
3. The employee's request does not exceed the amount of annual leave they would earn during the remainder of the year; and
4. Granting the leave will not cause a significant work impact.

- B. Office of Personnel Management regulations provide that when an employee who is indebted for unearned annual leave separates from the Government, the employee will be required to refund the amount paid for such leave or the amount will be deducted from any salary due. If the debt is not liquidated in this manner, it may be recovered from the employee's retirement account.
- C. Valid requests for annual leave by other employees will take precedence over requests for advanced annual leave if both requests cannot be granted.

### Section 3

- A. Consistent with workload and staffing needs, the Office will authorize annual leave or leave without pay to NTEU officers or their designees and to any national officer of NTEU for attendance at any national and/or district NTEU-sponsored conventions or meetings.
- B. Consistent with workload and staffing needs, in addition to the above, the Office will grant NTEU representatives leave to perform other NTEU business. The representatives may charge such leave, at their option, to earned annual leave or leave without pay.

### Section 4

The Office may approve a change in the selection of annual leave provided another

employee's already approved selection is not affected.

### Section 5

The Office will consider alternatives (such as reassigning work and/or changing deadlines) before rescinding annual leave which has been previously approved and would result in an employee incurring personal expenses.

### Section 6

- A. Pursuant to 5 USC § 6304 (d)(1), if an employee is unable to take annual leave scheduled and approved pursuant to Section 1(D) above due to the exigency of public business or for other reasons referred to in 5 USC § 6304(d)(1), the annual leave will be restored. This will be done in accordance with 5 CFR § 630.306. The Office will provide the impacted employee with written confirmation that the annual leave will be restored. In addition, the employee will be informed of the timeframe for using the restored leave.
- B. If not used during this time, the restored annual leave will be forfeited.
- C. The Office will provide information regarding the ability of employees to restore any leave lost due to the end of the year "use or lose" policy on an annual basis.

### Section 7

Absent extraordinary circumstances, the Office will grant a reasonable amount of annual leave (e.g., up to forty (40) hours) or leave without pay to attend the funeral of an immediate family member or for other bereavement purposes related to the death of the immediate family member. An immediate family member is defined as a: spouse; parent; child (including adopted child) or spouse of a child; brothers, sisters, and their spouses; and any individual related by blood or affinity whose close association

with the employee is the equivalent of a family relationship.

## **ARTICLE 10 - SICK LEAVE**

### **Section 1**

- A. Employees will earn and use sick leave in accordance with applicable statutes and regulations.
- B. Employees may use sick leave in fifteen (15) minute increments.

### **Section 2**

- A. The Office will grant sick leave to an employee when the employee:
  - 1. Receives medical, dental, or optical examination or treatment;
  - 2. Is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth;
  - 3. Provides care for a family member (as defined by Section 7 of this Article):
    - (a) Who is incapacitated by a medical or mental condition; or attends to a family member receiving medical, dental, or optical examination or treatment;
    - (b) With a serious health condition (as defined in 5 CFR § 630.1202); or
    - (c) 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.
- 4. Makes arrangements necessitated by the death of a family member or attends the funeral of a family member. This sick leave is in addition to the annual leave permitted under Article 9 (Annual Leave), Section 7;
- 5. Would, as determined by the health authority having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease; or
- 6. Must be absent from duty for purposes relating to the adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.
- B. The amounts and types of sick leave granted under this Article will be based on and consistent with the provisions of 5 CFR § 630.401 *et seq.* and the definitions in 5 CFR § 630.201. Appendix 10-1 explains the leave flexibilities available for employees who are caring for family members and lists the applicable leave limitations.
- C.
  - 1. When an employee knows in advance that sick leave will be required for medical, dental, or optical examinations, operations or treatment, he or she shall request sick leave generally at the time the necessity for the leave is determined.
  - 2. Notice of unanticipated sick leave, not requested in advance, will be given by the employee to the supervisor as soon as possible, but no later than two (2) hours after normal time of reporting for work on the first day of absence. If the

degree of illness or injury prohibits compliance with the two (2) hour limit, the employee will report the absence as soon as possible.

### Section 3

- A. Employees will not be required to furnish a medical certificate or other administratively acceptable evidence to substantiate a request for approval of sick leave for periods of three (3) consecutive days or less except as provided in Section 4.
- B. For absences of more than three (3) work days, employees may, as deemed appropriate by the Office, be required to furnish either a medical certificate, other administratively acceptable evidence, or a self-certification as to the reasons for their absence. Employees will have a reasonable period of time to furnish any requested medical certificate, but not later than fifteen (15) calendar days after the date the Office requests such medical certification, subject to Section 3(C) below.
- C. If it is not practicable under the circumstances to provide the requested evidence or medical certification within fifteen (15) days, the employee must provide the evidence or medical certification within a reasonable period of time under the circumstances, but no later than thirty (30) days after the date the agency 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.
- D. The Office acknowledges that only limited medical information is necessary in many situations. For example, for purposes of approval of sick leave requests covering up to sixty (60) consecutive calendar days, a diagnosis or prognosis will not be required.

Instead, an employee need provide no more than the following information:

- 1. Statement that the employee or family member is under the care of a physician;
  - 2. Statement that the employee or family member was incapacitated for duty and days the employee or family member was incapacitated;
  - 3. Information concerning the expected duration of the incapacitation; and
  - 4. Signature or stamp of health care provider.
- E. The Office will treat as confidential any medical information given by an employee in support of a request for sick leave. The Office may disclose such information, subject to its Privacy Act obligations, for work-related reasons on a need to know basis only.
  - F. Additional contract provisions about the privacy of medical information and procedures to protect privacy (including Designated Medical Information Official procedures) are found in Article 20, Sections 9(B), (C), and (D).

### Section 4

- A. When the Office has reasonable grounds to question whether an employee is properly using sick leave including annual leave in lieu of sick leave (for example, when sick leave is used frequently or in unusual patterns or circumstances), the Office may inquire further into the matter and ask the employee to explain. Absent a reasonably acceptable explanation, the Office will counsel the employee that continued frequent use of sick leave, or use in unusual patterns or circumstances, may result in a written requirement to furnish administratively acceptable evidence for each

subsequent absence due to illness or incapacitation regardless of duration. This does not prohibit the Office from reprimanding, suspending, or otherwise disciplining an employee when it determines that an employee has improperly used sick leave (including annual leave in lieu of sick leave). It only precludes the Office from requiring an employee to justify all future sick leave requests without first counseling the employee. Moreover, nothing in this provision precludes the Office from disciplining an employee and providing counseling at the same time.

- B. If reasonable grounds continue to exist for questioning an employee's use of sick leave (including annual leave in lieu of sick leave), then the Office may notify the employee in writing that for a stated period of time (not to exceed an initial six (6) months) no request for sick leave will be approved unless supported by a medical certificate. Any such written notice will describe the frequency, patterns, or circumstances that led to its issuance. The employee's use of sick leave during such period of time will be evaluated at the close of the stated period. The requirement to provide a medical certificate for every absence may be extended for periods of up to six months, if reasonable grounds for such extensions continue to exist.
- C. In no case will an employee be subject to the provisions in this Section because of perceived abuse of annual leave, tardiness, or other leave violations that are unrelated to the employee's absences due to health-related reasons.
- D. Employees who, because of illness, are released from duty, and are not subject to the restrictions of Section 4(B) above, will not be required to furnish a medical certificate to substantiate sick leave for the day released from duty. Subsequent days of absence will be

subject to the provisions of Sections 3 and 4.

- E. Employees, who are not subject to the restrictions in Section 4(B) above, will not be required to furnish a medical certificate on a continuing basis if the employee suffers a chronic condition that does not necessarily require medical treatment although absence from work may be necessary and the employee has previously furnished medical certification of the chronic condition. The Office may periodically require that further medical certification be provided to substantiate an employee's continued use of this provision.

## Section 5

- A. An approved absence that would otherwise be chargeable to sick leave will be charged to annual leave if requested by the employee and there is no reasonable basis for the Office to deny such request.
- B. An employee who becomes ill while on annual leave may have the time of illness changed to sick leave provided that the employee notifies his or her supervisor as soon as is reasonably possible and otherwise complies with the requirements of this Article.

## Section 6

- A. To the extent permitted by law, the Office may grant advanced sick leave to an employee, for sick leave uses, including in connection with the birth or adoption of a child, when all of the following conditions are met:
  - 1. Basic Eligibility:
    - (a) The employee is eligible to earn sick leave;



## ARTICLE 10

- (b) There is no reason to believe the employee will not return to work after having used the leave;
- (c) The employee has provided administratively acceptable or medical evidence of the need for advanced sick leave; and
- (d) The employee is not subject to the restrictions of subsection 4(B) above.

### 2. Hour Limitations:

- (a) The Office may advance employees up to 240 hours (for a full time employee) of sick leave per leave year where:
  - (i) The employee is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy or childbirth;
  - (ii) The employee or a family member has a serious health condition;
  - (iii) The employee's presence at work would, as determined by proper health authorities or a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease;
  - (iv) The employee is adopting a child and the leave is used for purposes relating to the adoption consistent with Section 2(A)(6) of this Article; or
  - (v) The employee provides care for a covered servicemember with a serious illness or injury,

provided the employee is exercising his or her entitlement under 5 USC § 6382(a)(3).

- (b) The Office may advance employees up to 104 hours (for a full time employee) for sick leave per leave year where:
  - (i) The employee receives medical, dental or optical examination or treatment;
  - (ii) The employee 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;
  - (iii) The employee provides care for a family member who would, as determined by proper health authorities or 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
  - (iv) To make arrangements necessitated by the death of a family member or to attend the funeral of a family member.

- B. A full-time employee may have no more than 240 (two-hundred and forty hours) of advanced sick leave to his or her credit at any one time.
- C. An employee's existing leave balances will not be a factor in the decision to grant or deny advanced sick leave requests except in connection with determining the number of hours to

which the employee may be eligible under this Section.

- D. If a request for advanced sick leave is denied in whole or in part, the employee shall be provided with the reasons for the denial in writing, upon request.

## Section 7

For sick leave approved under this Article, family member will be defined consistent with 5 CFR § 630.201 and includes:

- A. Spouse, and parents thereof;
- B. Children, including, but not limited to adopted, step, or foster children and spouses thereof;
- C. Parents and spouses thereof;
- D. Brothers and sisters and spouses thereof;
- E. Grandparents and grandchildren, and spouses thereof;
- F. Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (A) through (F) of this definition. Domestic partner means an adult in a committed relationship with another adult, including both same-sex and opposite-sex relationships. Committed relationship means one in which the employee, and the domestic partner of the employee, are each other's sole domestic partner (and are not married to or domestic partners with anyone else); and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a State or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union); and

- G. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

## **ARTICLE 11 - FAMILY LEAVE**

### **Section 1 - Family and Medical Leave Act**

- A. Consistent with the Family and Medical Leave Act (FMLA), all employees who have completed twelve (12) months of service (not required to be twelve (12) recent or consecutive months) with a federal agency are entitled to a total of up to twelve (12) workweeks of unpaid family and medical leave during any twelve (12) month period for the following:
  1. The birth of a son or daughter of the employee and the care of such son or daughter;
  2. The placement of a son or daughter with the employee for adoption or foster care;
  3. The care of spouse, son, daughter, or parent of the employee who has a serious health condition;
  4. A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position; or
  5. Any other reason recognized by applicable law or regulation.
- B. In order to receive leave under FMLA, an employee must apply by submitting the form attached as Appendix 11-1. The form must be submitted to the employee's first line supervisor generally not less than thirty (30) days before leave is to begin. If the need for leave is not foreseeable, and the employee cannot provide (thirty) 30 calendar days notice of his or her need for leave, the employee shall provide notice within a

## ARTICLE 12

reasonable period of time appropriate to the circumstances involved.

- C. An employee may substitute paid annual or sick leave (where appropriate under law and regulations) for any unpaid leave under the FMLA. See Appendix 10-1 for more information. Employees cannot substitute compensatory time or credit hours for approved FMLA leave. However, with managerial approval, employees may use earned compensatory time or credit hours prior or subsequent to FMLA leave.
- D. This Article will be implemented according to the current law and Government-wide regulations including those outlined in 5 CFR §630.1201 *et seq.*, including any amendments thereto.
- E. For the purpose of this Article, “spouse” means a husband or wife. Husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under State law for purposes of marriage in the State where the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either:
  - 1. Was entered into in a State that recognizes such marriages, or
  - 2. If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

### Section 2 - Maternity/Paternity Leave

- A. In addition to entitlement under the

FMLA, there will be no specified time granted for maternity and paternity leave for the birth and care of an employee's child. The length of time for such leave will be determined by the employee, the employee's supervisor, and the relevant health care provider. However, the Office will not ordinarily require an employee to return to duty earlier than six (6) months after the birth of a child absent the need for the specific skills or knowledge of a particular employee.

- B. The employee may choose how and in what order an absence for maternity or paternity leave will be recorded - sick leave (where appropriate under law and regulations), annual leave, leave without pay, compensatory time, or credit hours.
- C. The employee is responsible for notifying the supervisor of his or her intent to request leave for maternity or paternity reasons, including the type of leave, approximate dates, and anticipated duration.
- D. In anticipation of the employee's return to work, the employee may request part-time employment. See Article 7 (Part-Time Employment).
- E. If a pregnant employee requests modification of duties or a temporary assignment, and presents acceptable medical evidence to the Office of the necessity thereof, the Office will make a reasonable effort to accommodate her request.

## **ARTICLE 12 – ADMINISTRATIVE LEAVE**

### **Section 1**

Administrative leave is approved absence from duty without charge to leave and without loss of pay. Nothing contained in this Article will restrict the Office's ability to require the presence of an employee, pursuant to its right to assign work under 5 U.S.C. § 7106(a)(2)(B), should the Office

determine that the employee's services are necessary.

## Section 2

- A. When the voting polls or the registrar of voters are not open at least three (3) hours either before or after an employee's regular hours of work, the Office will generally grant an amount of administrative leave to vote or register, thereby permitting the employee to report to work three (3) hours after the polls/registrar's office opens or leave work three (3) hours before the polls/registrar's office closes, whichever requires the lesser amount of time.
- B. Under exceptional circumstances where the general rules do not permit sufficient time, an employee may be excused for such additional time as may be needed to enable the employee to register to vote or to vote, depending upon the particular circumstances of the individual case, but not to exceed a full day.

## Section 3

- A. Whenever it becomes necessary to close the post of duty due to an emergency situation or other reason and the Office has decided to grant administrative leave to those who are excused because of the emergency, the Office will provide reasonable notice to employees. The Office and NTEU shall jointly determine at the local level the most efficient procedure for employee notification of closure in each post of duty outside Washington, D.C.
- B. An emergency situation is one that is general rather than personal in scope and impact. It may be caused by such developments as heavy snow or severe icing conditions; flood; earthquake; hurricanes or other natural disasters; air pollution; massive power failures; major fires or serious interruptions to public

transportation caused by incidents such as strikes of local transit employees or mass demonstrations.

- C. If the emergency conditions described above exist and prevent an employee from getting to work and the post of duty is not closed, the employee may be granted administrative leave for absence from work for a part or all of the employee's work day upon providing the Office with reasonably acceptable documentation that the employee made a reasonable effort to reach work, but that emergency conditions prevented timely arrival. Factors that will be considered by the Office include:
  - 1. The fact that the employee lives beyond the normal commuting area;
  - 2. Mode of transportation normally used by the employee;
  - 3. Efforts by the employee to get to work (including continuing efforts where appropriate);
  - 4. Success of other employees similarly situated;
  - 5. Physical disability of an employee; and
  - 6. Local travel restrictions.
- D. The Office, at its option, may waive the above requirement for documentation for absences of four (4) hours or less. This provision does not apply to employees who are away from their POD for personal reasons and are prevented from returning to work due to emergency conditions. In the event of any grievances filed in regard to this Section, such grievances must include an explanation of why the employee failed to arrive at work.
- E. Employees are obligated to contact their supervisors as early as practicable to

explain the circumstances and provide an estimated time of arrival at work.

#### **Section 4 – Office Closing Rules and Administrative Leave**

##### **A. POD Open with Delayed Arrival/Opening:**

In the event the POD is open with a delayed arrival/opening, the employees who physically reported to the POD at any time during their tour of duty will be granted administrative leave for the authorized delayed arrival/opening. No administrative leave related to the delayed arrival/opening will be given to any other employee.

##### **B. POD Open with Early Departure:**

In the event the POD is open and employees are granted administrative leave for an early departure, the employees who physically reported to the POD at any time during their tour of duty will be granted administrative leave. No administrative leave related to the early departure will be given to any other employee.

##### **C. POD Closed for the Entire Day:**

1. In the event the POD is closed for the entire day, employees who were previously scheduled to be absent from work for that entire day (e.g., sick leave, annual leave, credit hours, etc.) will not be granted administrative leave.
2. The only exception to this general rule is: If an employee was pre-approved to use sick leave for a medical appointment and that appointment is cancelled, the employee will be granted administrative leave (equal to the amount of pre-approved sick leave) if the employee provides reasonably acceptable proof that the employee's

medical appointment was cancelled due to the same event that caused the office closure.

##### **D. Telework rules when a POD is closed are covered in Article 48.**

#### **Section 5**

- A. An employee will be granted administrative leave when the Office directs an employee to attend either: a tax audit required as condition of employment, a discussion of the employee's own tax affairs with a member of TIGTA or a representative of the Office, or a tax audit that results from an investigation by TIGTA or a representative of the Office.
- B. The Office will grant an employee administrative leave to receive a professional certificate or recognition when the certificate or the recognition is related to the employee's duties. The Office will also grant the employee administrative leave to travel to such an event and will reimburse the employee for related local travel expenses.

#### **Section 6**

- A. Employees not admitted to any bar within the United States or its possessions will be granted administrative leave to sit for the bar examination one (1) time, including any necessary oral interviews. The Office will grant administrative leave to attend any resulting local bar admission ceremony including any related local travel time.
- B. Employees who are required to take continuing legal or professional educational classes or ethics training in order to maintain a license or certification related to their position, will be granted administrative leave to attend such programs so long as the courses or classes are related to the

duties of the employee's position and only if programs offered by the Office do not satisfy the requirements of the profession. Under this provision, employees are limited to a total of twenty-four (24) hours of administrative leave per calendar year. Administrative leave may only be given for actual classroom time. Employees will not receive administrative leave for the purpose of studying for such classes or travel to or from such classes. [See Article 26 (Training), Section 4].

### Section 7

An emergency absence of less than one (1) hour should be excused when the affected employee provides the Office with a reasonably acceptable explanation for the absence upon the employee's arrival at the work unit. But, employees on a gliding work schedule as provided for in Article 5, Section 3 are entitled to no more than thirty (30) minutes of such administrative leave for an emergency absence.

### Section 8

- A. Permanent and career-conditional employees who are members of the National Guard, or any reserve unit of the Armed Forces (that is, Army, Navy, Air Force, Marines, or Coast Guard), will be entitled to military leave for each day of active duty in such organizations up to a maximum of fifteen (15) days in any fiscal year.
- B. Military leave, not to exceed fifteen (15) days which is unused at the beginning of the succeeding fiscal year will be carried forward for use in that fiscal year only. This gives a full time employee the potential for thirty (30) days military leave during a fiscal year (less for part-time employees).
- C. Approval of the military leave provided in the foregoing will be based on a copy

of the orders directing the employee to active duty and a copy of the certificate on completion of such duty.

- D. Military leave will be without loss of pay.

### Section 9

- A. Administrative leave for blood donations (including donation of blood derivatives) will be granted under the standard set forth in Section 1 of this Article.
- B. Employees may receive administrative leave for blood donations (including blood derivatives) normally limited to six (6) times per calendar year.
- C. An employee whose request to donate blood is approved is entitled to receive four (4) hours of administrative leave immediately following the donation for recuperative purposes. In addition, administrative leave will be granted for travel to and from a local donation site and to actually give blood. If necessary, additional recuperative time will be provided. However, the total administrative leave will be limited to the remaining scheduled hours in the employee's tour of duty on that day.
- D. An employee who is not accepted for donating blood is only entitled to the time necessary to travel to and from the local donation site and the time needed to make the determination.
- E. Upon request, an employee will be required to submit documentation that they gave, or attempted to give, blood on the day for which the administrative leave is requested.

### Section 10

The Office will generally grant an employee up to seven (7) days of administrative leave each calendar year to serve as a bone-marrow donor and up to thirty (30) days of



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administrative leave each calendar year to serve as an organ donor.

### **ARTICLE 13 - LEAVE OF ABSENCE**

#### **Section 1**

A. Absent the need for the specific skills or knowledge of a particular employee, leaves of absence may be granted, for no less than thirty (30) days and no more than twelve (12) months, to any employee for the purpose of obtaining higher education, pursuing a personal goal or objective, exploring a career change, meeting a family obligation, or for any other reason that does not conflict with the needs of the Office. The purpose of the leave of absence does not have to be job-related. Leaves of absence may be granted to all permanent full-time and part-time employees:

1. Ordinarily, only once in a five (5) year period;
2. Upon completion of five (5) years service in a permanent position in the Office of Chief Counsel; and
3. If the employee's performance is "Fully Successful" or better.

B. The following categories of employees are excluded from A, above:

1. Employees occupying limited appointments; and
2. Employees who will be eligible for voluntary retirement with an immediate annuity before or during the leave of absence period.

C. All requests for leaves of absence described in this Article will be approved by the Office absent the need for the specific skills and knowledge of the particular employee.

#### **Section 2**

- A. The Office will approve leaves of absence for up to six (6) employees Counsel-wide to serve as a local elected officer in a NTEU chapter, elected national officer of NTEU, or a full-time appointive position for NTEU. However, no more than two (2) individuals may be on a leave of absence for a NTEU appointive position at any one time.
- B. Leaves of absence granted for elected positions will be for a period concurrent with the term of office of the elected official and will be automatically renewed by the Office upon notification in writing that the elected official has been reelected and wishes to continue in a leave of absence status. Leaves of absence granted for appointive positions shall not exceed four (4) years.
- C. The parties recognize that such employees are subject to all limitations upon benefits that apply to periods of extended leave without pay. This includes the election to discontinue life and health insurance benefits or to continue coverage at the employee's cost.

#### **Section 3**

Employees may take LWOP for up to thirty (30) calendar days for political activities permitted under the Hatch Act Reform Amendments of 1993.

#### **Section 4**

- A. Leaves of absence granted or approved in accordance with this Article are subject to the following conditions in addition to such other conditions as may be imposed by law or higher regulations:
  1. Leave is without pay;
  2. Access to the Office's premises by such employees will be in

accordance with the terms of this Agreement or the Chief Counsel Directives Manual (CCDM), whichever is applicable; and

3. Employees are subject to the Office of Government Ethics, Rules and Regulations and other applicable rules or regulations related to ethics and conduct.

- B. The Office will place the returning employee into the same position the employee occupied before the leave of absence if there is an available vacancy. If there are no available vacancies, the Office will place the employee into another position which utilizes his or her knowledge, skills, and abilities in the commuting area. If no such positions exist in the commuting area, the employee will be placed into another position which utilizes his or her knowledge, skills, or abilities somewhere in the Office of Chief Counsel.

## **ARTICLE 14 - AWARDS**

### **Section 1**

- A. The purpose of performance awards is to motivate employees by recognizing and rewarding those who achieve high levels of performance. Performance awards are comprised of Sustained Superior Performance Awards, Special Act Awards, and Quality Step Increases (QSI). They are defined as follows:

1. Sustained Superior Performance Awards - These awards are given to employees for high-level performance of duties as reflected in the most recent rating of record. This type of recognition is appropriate when the employee's performance clearly shows that their overall performance has substantially exceeded acceptable job requirements.

2. Special Act Awards - These awards are appropriate when an employee, or group of employees, performs beyond expectations on a specific assignment or aspect of an assignment or job function. The special act must have been connected with or related to official employment, in the public interest, and so significant that special recognition is justified. A special act is a single action or series of actions of relatively short duration either within or outside the normal duties performed by the employee(s) and differs from superior performance since sustained overall performance is not involved.

3. Quality Step Increase (QSI) – These awards may be given in those circumstances where an employee's performance exceeds that rewarded by a performance award. Since a QSI increases an employee's rate of basic pay through an additional within-grade increase, it should be given to recognize and reward employees who display continuing outstanding performance. A QSI may only be given upon the written approval of management.

- B. Performance awards (that is, Sustained Superior Performance Awards, Special Act Awards, and Quality Step Increases) shall be provided on a fair and objective basis considering merit, budget limitations and the nonmandatory nature of awards. The performance awards program shall provide awards based on employee achievement. Therefore, in keeping with this concept, the awards program will focus on Sustained Superior Performance Awards and those awards will be based on an employee's overall performance appraisal rating.

- C. Consistent with the goals and limitations

set forth above, the Office's policy is to recognize high levels of performance (outstanding or excellent/exceeds fully successful) and to recognize employees who achieve a relatively high level of performance in their organizational component. Within an individual work unit, employees with outstanding annual appraisal ratings will be considered first for performance awards.

D. At NTEU's request, the Office will annually publicize the names of bargaining unit employees who receive awards, including performance awards. The publicity will be done Counsel-wide via the intranet. The purpose of the publicity is to provide open, visible, and public recognition for the award recipients.

E. Each year, the Office will provide National NTEU with a listing of all awards provided to bargaining unit employees. The list will contain the employee's name, award amount, award type, job series/title, and organizational component. In addition, National NTEU will be sent information concerning employees who achieved an "excellent" or "exceeds fully successful" rating or above but who were not provided an award. That information shall include the organizational component, and annual rating of record for such employees, but shall not include the names of the employees. The information required under this subsection shall be provided in a searchable/sortable spreadsheet format within 120 days of the issuance of the awards.

F. If an employee with an "outstanding" (5) annual appraisal rating does not receive a performance award, the Office will provide NTEU and/or the employee, upon request, with a specific written explanation.

G. The Office will not exclude any

employee from consideration for performance awards based on job classification or bargaining unit status.

- H. 1. No Counsel employee will receive any award under this Article if the employee has (during the twelve (12) months prior to the effective date of the award) received a suspension, a demotion, a reprimand or is the current subject of an ongoing investigation into serious misconduct (including but not limited to employee tax compliance).
2. The Office will reconsider an award decision made using this provision if:
- (a) The action is reversed or mitigated to an action less than a reprimand; or
  - (b) The conduct investigation results in something less than a reprimand.

## **Section 2 – Awards Budget**

- A. During the meetings held pursuant to Article 37, Section 5, the parties will discuss the estimated awards budget, any timeline for running an awards program, and/or any awards payouts.

## **Section 3 – Distribution Date**

- A. The Office will normally distribute any performance awards to eligible bargaining unit employees by the end of the first full pay period of December of the current fiscal year for performance in the prior fiscal year. If the Office is unable to meet the distribution date, it will notify NTEU National of the reasons. Upon request, the Office will meet with NTEU to explain the reasons and discuss alternatives.
- B. Consistent with applicable law, the Office retains the flexibility to pay for performance awards either in the same

fiscal year as the performance ratings of record upon which the awards were assigned to employees or by the end of the following fiscal year.

## **ARTICLE 15 - OVERTIME AND COMPENSATORY TIME**

### **Section 1**

Employees who are required by the Office to work overtime will be compensated in accordance with applicable laws, rules and regulations.

### **Section 2**

- A. Opportunities for overtime will be distributed as equitably as possible among qualified employees.
- B. First consideration for overtime will be given to qualified employees within the work unit from which the overtime work originates.
- C. An employee will, upon request, be released from an overtime assignment if a fully qualified replacement is available and willing to work.
- D. The Office will make available to NTEU, upon request, current records of overtime assignments of employees relevant to resolving individual claims of unfair and inequitable distribution.
- E. The Office will, when circumstances permit, notify an employee three (3) days in advance of scheduling an overtime assignment.
- F. The Office will seek to avoid overtime assignments that result in employees working extended periods without a day off.

### **Section 3**

Compensatory time earned must be used by the end of the 26<sup>th</sup> pay period after the pay period in which it was earned.

Compensatory time not used within this period will be processed (e.g., liquidated, forfeited, etc.) in accordance with law, rule, or regulation.

## **ARTICLE 16 – TRAVEL**

### **Section 1**

- A. Travel of employees on official business is governed by applicable laws and Government-wide rules and regulations, and, except as otherwise provided below, the IRS travel policies.
- B. To the extent that travel systems for filing travel vouchers, purchase of airline tickets, etc. followed by IRS are changed, the Office will change its systems, where necessary, to ensure that its systems are in compliance with the IRS.
- C. Changes in government-wide travel regulations or IRS travel policies that result in a conflict with the provisions of this Article shall entitle either party to reopen the relevant Sections of this Article.
- D. Except as provided in Section 1(E), for employees who are assigned to training or duty away from their regularly assigned post of duty (POD), and who elect to return home during non-work days during their temporary duty assignment, the maximum reimbursement for round trip transportation and per diem (or actual expenses) is limited to what the employee would have been allowed had he or she remained at the temporary duty location.
- E. The Office will reimburse employees for one round trip to and from their

## ARTICLE 16

residence whenever employees are required to remain in travel status for four consecutive weekends and the travel is within the U.S. If the employee remains in a travel status for 7 or more consecutive weekends, the Office will reimburse employees for two round-trips to and from their residence if the travel is within the U.S.

- F. Any employee traveling on official business may, in accordance with applicable law and regulations, obtain an advance of funds to cover per diem or other required transportation expenses.
- G. In case of emergency job related travel, the Office will attempt to accommodate a traveler needing an advance.
- H. Although disabled employees may be directed to perform official travel, there are situations in which the assistance of an attendant or escort must be provided if the travel is to be accomplished. Under such circumstances the transportation and per diem expenses of an attendant will be allowed as necessary for travel.
- I. The Office will make the travel rules and regulations available to employees electronically on the Office intranet or through links to the GSA web site. Employees having questions related to travel or entitlement to reimbursement for travel should refer such matters to their manager.
- J. If the travel is expected to require employees to be absent from their POD for one (1) or more months, the employee will be given at least thirty (30) days notification of their date of departure when practicable.
- K. Employees who travel on official government business for more than one day are allowed to make one brief phone call home daily at government

expense. In order to minimize the costs associated with making phone calls from hotels, employees who have government telephone calling cards must use those cards to make such calls.

### Section 2

Consistent with 5 CFR § 610.123, the Office will, if practicable, schedule and arrange for travel of employees to occur within the employees' regularly scheduled work hours. However, if circumstances require the employees' presence on Monday too early to permit travel that day, the employees may perform the travel on the preceding day (Sunday), leaving home or POD at a reasonable time. If the employees prefer, travel will be permitted during duty hours on the preceding Friday. In this event, subsistence reimbursement may be allowed to start with the departure time but will be limited to that which would have been payable if departure was made on Sunday. Employees who are required to travel during non-duty hours may obtain, upon request, the written reason why such travel was required at those hours.

### Section 3 – Compensatory Time Off for Travel

- A. Employees will be compensated for time spent in travel in accordance with applicable laws and regulations.
- B. When time spent in travel during non-duty hours is not otherwise compensable, employees may earn compensatory time off for travel in accordance with 5 CFR Part 550, Subpart N (5 CFR § 1401 – 1409).
- C. In order to earn compensatory time off for travel, the travel must be during non-duty hours, management directed, and not otherwise compensable.
- D. In addition, the Office-specific rules and procedures regarding compensatory time off for travel are as follows:



1. Travel time outside of an employee's regular duty hours constitutes compensable hours of work when the travel results from an event which could not be scheduled or controlled administratively (e.g., travel to and from Tax, Bankruptcy or other courts, etc.).
2. Consistent with applicable Treasury Directives, in order to receive compensatory time off for travel, an employee must be traveling outside a 50-mile radius of his or her official duty station.
3. The usual waiting time at any train station or airport is up to 3 hours before scheduled departure.
4. The employee must request the compensatory time off for travel either by submitting a narrative explaining the relevant facts supporting the request or by completing the form attached as Appendix 16-1 to his or her first line supervisor. This submission will normally be completed within fourteen (14) calendar days of returning from travel. This time will be extended if the employee is on leave.
5. Compensatory time off for travel may be earned and taken in 15-minute increments.
6. At an employee's election and subject to management approval granted under the standards of Article 5, an employee may choose to receive credit hours for travel vs. compensatory time off for travel if the employee is performing actual work (e.g., mandatory reading, preparing for or reviewing a document or a presentation, preparing for training courses, and contacting other government officials and taxpayers) while in a travel status outside duty

hours. However, under no circumstances can an employee receive both credit hours and compensatory time off for travel for the same hours spent in a travel status.

#### **Section 4**

Employees will be compensated for per diem expenses in accordance with GSA regulations.

#### **Section 5**

Employees will be reimbursed for fees in connection with changing official travel arrangements caused by the needs of the Office, or due to a personal emergency such as a family or medical emergency or natural disaster.

#### **Section 6 - Public Transportation Subsidy Program**

- A. The Office will offer public transportation subsidies following IRS procedures to all employees in all locations. These employees will be reimbursed at the current maximum non-taxable amount provided by the IRS allowed by law up to the costs of the transportation. The subsidy may be in a form not readily convertible to cash or used for purposes other than intended, e.g., farecards, passes, tokens, tickets, or other instruments issued by authorized local transit authorities. Cash reimbursements will only be allowed if a voucher or similar item which may be exchanged only for a transit pass is not readily available in a particular location.
- B. So long as the IRS handles all administrative aspects of the transit subsidy program for Counsel employees, all policies and practices (including maximum amounts reimbursable) for Counsel employees will be the same as for IRS employees. If the administration of this program is



decentralized, either party may re-open this provision at any time.

## **Section 7 - Travel Gainsharing Savings Program**

- A. Pursuant to Government Employees Incentive Awards Act, 5 USC § 4501-4507, which authorizes government agencies to pay cash awards to employees for actions which promote “efficiency” or “economy,” the Office will provide awards to employees who save the government travel money through their own initiative.
- B. Counsel employees on official travel may receive cash awards of 50% of the combined savings from the following five (5) categories:
  1. Incurring lodging costs that are less than the maximum locality rate;
  2. Sharing a hotel room with one other government traveler (each traveler saves ½ of the single daily lodging rate times the number of days);
  3. Staying with friends or family which results in zero lodging costs;
  4. Using frequent flyer miles accumulated from government or personal travel to purchase an airline ticket for official use, or by utilizing free flights where such flights result from the employee’s relationship with a non-government employee, e.g., where the employee is entitled to free or discounted flight costs as a relative of a non-government airline employee; and
  5. By traveling on his or her own time to or from official training programs or Division-wide meetings provided that the employee receives advance approval from management to travel on his or her own time; the employee attends the entire program or meeting; and the employee reports to duty the day following the conclusion of the program or meeting (e.g., if an employee is assigned to a training program ending at 5 p.m. on Thursday and the employee gets permission from his or her manager to travel home Thursday night at the conclusion of the program and therefore incurs no additional lodging costs and reports to his or her POD or works pre-approved telework on Friday morning).
- C. All Office employees who save a minimum of \$100 per fiscal year while in official travel status, either foreign or domestic, are eligible to participate in this travel gainsharing program (“the Travel Gainsharing Program”). For example, an employee who saves a combined total of \$250 in lodging and travel expenses during a fiscal year will receive a \$125 award at the end of the fiscal year. Each participating employee will receive a SF-50 showing the award amount, and the amount will be included on the employee’s Form W-2. Taxes and other applicable deductions will be withheld from the award amount.
- D. Participating employees have the responsibility to track savings and submit a Travel Savings Form (See Appendix 16-2) with each travel voucher filed where savings have resulted. Once the minimum annual savings threshold has been reached or exceeded, the employee should notify his or her manager that he or she is now eligible to participate in the Travel Gainsharing Program.
- E.
  1. Relocation travel costs are not covered by the Travel Gainsharing Program.
  2. Travel gainsharing benefits are for travelers only, not for the individual who makes the travel arrangements.

Employees will not benefit from lodging savings where the lodging cost savings was part of a negotiated package for training or other meeting, but can, if otherwise qualified, benefit if the lodging savings is a result of a program or membership that has been procured or paid for by the employee, etc.

3. No gainsharing awards will result from weekend travel to an alternate location.
4. Hotel lodging costs must be paid with a government contractor issued charge card in order to qualify for inclusion under this program, unless the employee has received an exemption authorized by the applicable regulations.
5. Lodging costs incurred on personal time such as leave will not be counted as savings.

## **Section 8**

Consistent with law and GSA regulations, employees may retain promotional items, including frequent flyer miles earned on official travel, so long as such items are obtained under the same conditions as those offered to the general public at no additional cost to the government.

## **ARTICLE 17 - RETIREMENT**

### **Section 1**

The Office will annually, to the extent of its authority, continue to provide access to the IRS retirement planning program in each POD. All employees in the unit nearing eligibility for retirement may voluntarily participate and will be provided with administrative leave in order to attend the meetings absent the need for specific skills and knowledge of a particular employee. If the meetings take place within the local commuting area, the Office will pay the

reasonable local transportation expenses incurred.

### **Section 2**

Employees who separate voluntarily or involuntarily (except by retirement) will be informed by the Office as to their rights and eligibility to file for disability retirement, discontinued service annuity, and / or deferred annuity.

### **Section 3**

An employee may withdraw a retirement application at any time before its effective date, provided the withdrawal is communicated to the Office in writing and is received by the Office before it has made a commitment to fill the position of the retiring employee. See Appendix 17-1 for retirement eligibility rules.

## **ARTICLE 18 - REDUCTION IN FORCE**

### **Section 1**

The provisions of this Section will apply to any reduction in force conducted by the Office during the life of this Agreement. In addition any reduction in force will be accomplished in accordance with applicable laws, rules, and regulations.

### **Section 2**

A reduction in force (RIF) is the release of a competing employee from their competitive level by furlough for more than thirty (30) calendar days, separation, demotion, or reassignment requiring displacement; when the release is required because of lack of work, shortage of funds, insufficient personnel ceiling, reorganization, the exercise of reemployment or restoration rights, or reclassification of an employee's position due to erosion of duties when the reclassification will take effect after an agency has formally announced a reduction in force in the employee's competitive area

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and when the reduction in force will take effect within one-hundred eighty (180) days.

### Section 3

When the Office determines a reduction in force is necessary, the Office will provide notice to NTEU thirty (30) days in advance of bargaining, giving the approximate numbers, types, and geographic locations of the positions affected and the anticipated effective date.

### Section 4

The parties agree to an expedited bargaining process of sixty (60) days after the completion of notification. If an agreement is not reached at the end of this period, the parties agree that the Office may submit the impasse to binding arbitration or through the statutory process. Any outstanding dispute(s) regarding NTEU's request for information under 5 USC § 7114(b)(4) will be resolved by the arbitrator, if the Office determines to resolve the impasse through binding arbitration; or through the statutory process, if the Office determines to resolve the impasse through the statutory process.

### Section 5

Prior to any reduction in force action, the parties will negotiate career transition and planning procedures (CTAP). The RIF will not be implemented until negotiations over CTAP are completed, absent emergencies as defined by 5 USC § 7106(a)(2)(D).

## **ARTICLE 19 - PRIORITY PLACEMENT PROGRAM**

### Section 1 - Overview

It is the position of the Office to make every effort to avoid the demotion of an employee when it is without cause and not at the employee's request. However, when a demotion such as this is inevitable, this Article covers those situations (except reductions in force resulting in removals that

entitle employees only to coverage under the Department of the Treasury's Priority Placement Program) where employees qualify for grade/pay retention.

### Section 2 - Employee Eligibility

- A. Bargaining unit employees who are involuntarily demoted during the term of this Agreement as a result of a reduction in force, reclassification of their position to a lower grade, an A-76 contracting out of their position, or who have declined an offer of transfer with the function to a location outside the commuting area, and who otherwise meet the conditions of eligibility for grade and/or pay retention as outlined in 5 CFR § 536, including any amendments thereto, are eligible for the Priority Placement Program.
- B. Employees become eligible for the program on the effective dates shown on their SF-50s. The personnel office will provide official notice (Employee Notice of Eligibility and Standard Form 50) that the employees meet the eligibility requirements for grade and/or pay retention. NTEU will be furnished a copy of the Notification of Eligibility.
- C. Program eligibility is terminated when the employee transfers to another agency, resigns, receives a "reasonable offer," is placed in a position the grade of which is equal to or greater than the retained grade, elects in writing to terminate the benefits of grade retention, or otherwise loses eligibility for grade and pay retention. A reasonable offer must meet the following conditions:
  - 1. The offer must be in writing, and must include an official position description of the offered position;
  - 2. The offered position must be a permanent position and one for which the employee meets the

established qualification requirements;

3. The offered position must have at least the same number of hours as the employee's former position;
4. The offered position must be in the same commuting area;
5. The offer must come after formal determination and notification of entitlement to grade/pay retention;
6. In the case of an employee eligible for grade retention, the offer must be to a position the grade of which is equal to or greater than the retained grade; and
7. In the case of an employee eligible for pay retention, the offer must be to a position the rate of basic pay of which is equal to or greater than the employee's retained pay.

- D. Acceptance of a position at an intervening grade will not terminate an employee's eligibility to continue in the program unless the position is one in an established career ladder with a full performance level equal to the grade of the position from which demoted.

### **Section 3 - Determining Appropriate Vacancies for Referral**

- A. Employees in the Priority Placement Program will receive priority placement referral for vacancies within their commuting area which management has determined to fill and for which they are qualified and that are at the same or an intervening grade/rate of pay as the position from which demoted. The vacancy need not be in the same classification series as the employee's previous position.
- B. Employees in the program will receive consideration for career ladder

vacancies for which they are qualified and that have a full performance level to the same or intervening grade as that from which demoted. Placement within the career ladder will be at the highest grade level for which the employee meets qualification requirements.

- C. Promotions of employees within a career ladder or other career promotions that are made as an exception to competitive procedures and do not create an additional vacancy are exempted from these provisions.
- D. Each NTEU representative identified through the process in Article 39 (NTEU Representatives and Official Time) will be provided with the names of employees eligible for the program, along with a list of the positions for which these employees qualify, on a weekly basis, unless there are no changes in the list from the prior week.

### **Section 4 - Referral of Applicants**

- A. Whenever an appropriate vacancy is identified, Form 4537, Roster of Eligibles for Promotion and Promotion Certificate, will be prepared, identifying the affected employee or listing eligible employees in alphabetical order. Current performance appraisals and SF-171s will be forwarded to the selecting official. First consideration will be given to these employees before considering other employees. This procedure shall not affect management's right to fill vacancies from any appropriate source.
- B. A record of the referral and the result must be maintained and documented.
- C. Applicants eligible for priority selection under the provisions of 5 CFR § 330.601, *et seq.*, and applicants eligible for priority consideration will precede referrals of Priority Placement Program employees. If more than one employee is referred for priority placement, the

selecting official will select any of those referred, or he or she may make no selection.

- D. The selecting official's determination will only be based upon information relating to an employee's ability to perform the duties of the position using pre-established knowledge, skills and abilities. Upon request, non-selected employees will receive a written explanation of their non-selection.
- E. A priority placement employee will have up to seven (7) days to accept or reject a "reasonable offer."
- F. Employees registered in the Priority Placement Program will be given priority consideration over other applicants (except those employees for whom such training is mandatory because of job requirements) for formal training where it is needed to qualify employees for another position.

## **ARTICLE 20 - PERSONNEL RECORDS AND EMPLOYEE PRIVACY**

### **Section 1**

- A. The Office is governed by the provisions of the Privacy Act in the collection, maintenance, use and dissemination of personal information pertaining to employees. The Office shall maintain in its personnel records only such information as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order.
- B. Employees or their personally designated representatives will, upon request, have access to records or information pertaining to them with the exception of records restricted by law or Government-wide rule or regulation. Examination of actual physical records (as opposed to receipt of copies) will take place in the general presence of

those having custody of the records. 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 Office before disclosure of their written record will be made to a designated representative or in the presence of a designated representative. Employee access will be on official time.

- C. 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. Charges, if any, for photocopies supplied will be in accordance with 5 CFR § 297.206.

### **Section 2**

As prescribed by the Privacy Act (and only in noncriminal matters), the Office will collect information pertaining to an employee directly from the employee to the greatest extent possible when the information may result in adverse determinations about an individual's rights, benefits and privileges under Federal programs. In any request for personal information from an employee, the Office will notify the employee in writing of:

- A. The effects on him or her, if any, of not providing all or any part of the requested information;
- B. The principal purpose(s) for which the information is intended to be used;
- C. The authority (whether granted by law or executive order) that authorizes the solicitation of information and whether disclosure of such information is mandatory or voluntary; and
- D. The routine uses that may be made of the information.



### Section 3

Employees have the right to request amendment of any record pertaining to them in accordance with 5 USC § 552a(d)(2) and 5 CFR, Part 297, Subpart C. Disclosure will be made in accordance with Subpart D of 5 CFR Part 297.

### Section 4

No record, file or document pertaining to an employee will be made available to any unauthorized persons for inspection or photocopying. Further, such information will be made available to authorized persons (as defined by 5 USC § 552a) only for official use as provided in the Privacy Act of 1974; in the Office of Personnel Management (OPM) Notices of Systems of Records for OPM records; and/or in the Treasury/IRS Notices of Systems of Records for Treasury/IRS records.

### Section 5

- A. Official Personnel Folders (OPF's), including records maintained by employees' supervisors, will be purged in accordance with current applicable regulations; provided, however, employees may at their option request that a clearance letter be included or removed from their Official Personnel Folders. Employees are not permitted to review their original OPF outside the presence of a representative of the Office.
- B. Requests for OPFs:
  - 1. OPFs located in the National Office - An OPF or a copy thereof will be provided to an employee or NTEU within ten (10) workdays of a request.
  - 2. OPFs located elsewhere - If the OPF is located at the Transactional Processing Center (TPC) or other permanent Office storage locations,

the Office will then take all steps practical to provide the OPF to the employee or NTEU within twenty (20) work days of the original request to the Office.

- 3. If NTEU has made an information request for an OPF but the OPF is not provided under the time frames mentioned above, NTEU will be granted an extension of time to file a grievance, or to submit an oral or written reply in the case of a disciplinary, adverse, or unacceptable performance action, or invoke arbitration. The extension will end five (5) days after the OPF is provided.

### Section 6

The Office will maintain an Employee Performance Folder (EPF) for each employee separately from other personnel records such as drop files or OPF's. No documentation related to disciplinary or adverse action will be placed in an employee's EPF unless such action was based on performance reasons. The placement of documents into EPFs shall be subject to the recordation provisions of Article 21 (Performance Appraisals), Section 7. An EPF is a record of personal data, therefore, access to EPF's is subject to CCDM 30.4.1.12.6.2 and is limited to management officials with a need to know and those others referenced in the current published system of records description in accordance with the Privacy Act, 5 USC § 552a.

### Section 7

The parties recognize that developing automation technologies have enabled some information that is presently stored in paper-based systems to be stored in other systems. If the Office elects to change its method of storing any information that is subject to the terms and conditions of this Article, the Office will ensure all employees



or their personally designated representatives continued access to such information or its equivalent. Nothing in this Section will require the Office to maintain any information that is not otherwise required to be maintained by law, higher level rule or regulation, or by agreement between the parties.

### Section 8

- A. Except where prohibited by law, the Office will promptly give employees notice of any taxpayer or Congressional complaint that directly concerns the employee's conduct or performance. This provision does not apply to any taxpayer or Congressional complaints referred to TIGTA.
- B. To protect confidentiality, the Office will not use employee identifiers on surveys.

### Section 9 – Privacy of Medical Information

- A. The parties recognize the importance of employees' privacy concerns about their medical information. The Office will treat as confidential any medical information provided by an employee. The Office shall disclose this information on a need to know basis only.
- B. If, based on an employee's request for leave, reasonable accommodation, or any other medical-related request, the Office decides to seek access to medical information, the information sought shall be narrow in scope and related only to the condition cited by the employee in his or her request for leave or reasonable accommodation. If the information provided by an employee is vague, ambiguous, or unclear, the Office may ask follow-up questions in order to obtain sufficient information to make a decision on the request.
- C. 1. If an employee has requested a reasonable accommodation or in a circumstance where the Office

determines that it needs a diagnosis or prognosis, the Office will provide the name and contact information of the Office's Designated Medical Information Official (DMIO), who will be a medical professional, and will inform the employee that he or she has the option to provide that information to the DMIO.

- 2. The DMIO is authorized to share only the relevant facts with the appropriate manager.
- 3. The DMIO procedures do not apply to any situations not outlined above such as requests for sick leave, requests for advanced sick leave, FMLA requests (see Article 11), or requests for medical telework under Article 48.
- 4. The Office shall provide NTEU with the name, email, and other contact information of the DMIO on a yearly basis or if the official changes.
- D. An employee's treating physician(s), licensed health care professional, or other medical professional with knowledge of an employee's medical condition may only be directly contacted about details of the employee's medical condition by anyone associated with the Office if the employee provides consent in writing to make such contact. If the Office seeks such a consent, it shall provide the employee with a written description of what information it is seeking as part of its request. Moreover, the Office may not require the employee to sign a release for their medical information.

## **ARTICLE 21- PERFORMANCE APPRAISALS**

### **Section 1 - Applicability**

- A. This Article is intended to be interpreted and applied in a manner consistent with 5 USC Chapter 43 and 5 CFR Part 430.

- B. For purpose of this Agreement, competitive and non-competitive personnel actions include annual ratings, all promotions to bargaining unit positions, within-grade increases, reductions in force, and acceptable level of competence determinations.

## Section 2 - Definitions

- A. "Annual rating"—a written record of the appraisal of each critical and non-critical element.
- B. "Annual rating of record"—the overall performance rating, which should be conducted once a year.
- C. "Appraisal"—the act or process of reviewing and evaluating the performance of an employee against the described performance standard(s). This includes written progress reviews.
- D. "Critical element"—a component of an employee's job that is of sufficient importance that performance below the minimum standard established by the Office requires remedial action.
- E. "Performance appraisal"—the Office's written assessment of an employee's work performance.
- F. "Performance standards"—the expressed measure of the level of achievement established by the Office for the duties and responsibilities of a position or group of positions.
- G. "Evaluative recordation"—a supervisor's written record of indications of performance that may impact on personnel actions affecting the employee.

## Section 3 - Critical Elements and Performance Standards

- A. Elements and standards will, to the maximum extent feasible, permit the

Office to evaluate accurately the job performance of bargaining unit employees on a basis of objective criteria related to the position in question.

- B. After initial issuance of elements and standards to each bargaining unit employee, the elements and standards will be reissued annually, within sixty (60) days of the beginning of the appraisal period, to each affected employee. In addition, each time an employee is assigned to a new position, the Office will communicate the specific critical elements and performance standards of the position that will apply to the employee.
- C. All aspects of all standards, including numerical standards, procedures, or requirements, referenced in the elements and standards will be communicated to affected employees at the time the employees receive their elements and standards. When employees are expected to meet numerical standards that are different from those referenced above, those differences will be communicated in writing.
- D. Elements and standards will be consistent with the duties and responsibilities in employees' written position descriptions and will be applied reasonably. Employees will not be held responsible for elements and standards that are inconsistent with their assigned duties and/or responsibilities.
- E. Each element will be numbered and/or lettered for identification purposes. The Office will inform the employee, at the time the elements and standards are communicated, if aspects of any elements are to be accorded different weights.
- F. To the extent feasible, performance standards must be specific, observable,

and measurable, and, through their description of the goal in terms of quality, quantity, or timeliness, must provide a clear means of assessing whether objectives have been met.

- G. The Office will not use critical job elements and standards that impose absolute standards unless authorized by law.
- H. Management will meet with employees once every twelve (12) months to discuss elements and standards. If management holds group meetings with respect to elements and standards, the representative designated by NTEU will be provided reasonable notification and an opportunity to send a representative to attend these meetings. The purpose of these meetings/sessions will be to clarify any questions that the employees have concerning their elements and standards.
- I. In accordance with 5 CFR § 430.208(c), the Office will not prescribe a distribution of levels of summary ratings for bargaining unit employees. Instead, supervisors will have discretion to rate employees based on the elements and standards of their position.

#### **Section 4 - Performance Appraisals**

- A. Employees will receive performance appraisals at least annually except when:
  - 1. There is a change from one permanent position to another during the last ninety (90) days of the appraisal year (the departure rating(s) become the rating of record for the appraisal period); or
  - 2. The supervisor cannot prepare a rating of record at the time specified in the plan, the appraisal period will be extended for the amount of time

necessary to meet the minimum appraisal period (that is, ninety (90) days) at which time a rating of record will be prepared. During this period, the employee's existing rating will be used as the rating of record until the new appraisal is prepared.

- B. 1. Absent unusual circumstances, ratings of record will be prepared within sixty (60) days of the end of the appraisal period. Upon request, the Office will provide the designated NTEU representative the portion of the Overage Evaluation Report that concerns bargaining unit employees.
- 2. Annual ratings/annual ratings of record when used will reflect the employee's performance for the full annual appraisal period unless the information necessary to make such an appraisal is not available. Ratings for periods of time which are less than the full annual appraisal period will be so noted. However, annual ratings/annual ratings of record must be postponed or delayed as required in 5 CFR Parts 430 and 531.
- 3. During the final thirty (30) days of an employee's annual appraisal period (or as otherwise agreed upon), the employee may prepare a self-assessment to submit for the manager's consideration. Employees will be allowed a reasonable amount of duty time, not to exceed four (4) hours, to prepare such assessments.
- C. Performance appraisals, including ratings on each element and subelement, will be made in a fair and objective manner and will take into account the employee's total performance for the rating period. They will measure actual work performance in relation to the performance requirements of the positions to which

employees are assigned and in accordance with Section 3(D) above.

- D. At the completion of the appraisal process, or upon request at any time thereafter, an employee shall receive a copy of his or her fully executed performance appraisal.
- E. Supervisors will discuss with employees the contents of annual performance appraisals at the time such appraisals are issued to the employees.
- F. Employees may make written comments concerning any disagreement with a performance appraisal within fourteen (14) days of issuance. Such comments will be attached to and become part of the appraisal. In the case of any appraisal that will be used in a pending competitive action, written comments must be submitted within five (5) workdays of issuance.
- G. Employees will be provided with a reasonable amount of duty time, not to exceed two (2) hours, to prepare written comments concerning any performance appraisal. Such comments will be attached to and become part of the appraisal. An employee's failure to rebut or a supervisor's failure to respond carries no significance.
- H. Signatures and/or initials on appraisal forms may be electronic. This includes signatures of the supervisor(s) signing the form as well as the employee. An employee's initials on a performance appraisal, where initialing is provided for, indicates only that the appraisal has been received, not the employee's agreement with the appraisal.
- I. Ratings for a particular year reflect the employee's work for that appraisal period. For example, if an employee receives a "meets" in a subelement in one appraisal period, the nature or character of an employee's work in the

next appraisal period may result in the same, higher, or lower rating in that appraisal period. Employees are encouraged to discuss their performance for a particular appraisal period with their managers.

- J. The process of monitoring performance is ongoing. Therefore, the Office will counsel employees in relation to their overall performance on an as-needed basis.
  - 1. Counseling is not required if the overall rating is only impacted because a subelement is changed to "Not Applicable" (NA) for the rating period. However, if a supervisor is aware at the time of the progress review that he or she intends to change an employee to a NA rating in a subelement the supervisor will tell the employee of that intention.
  - 2. Counseling is required:
    - (a) When a supervisor notices a decrease in overall performance, defined as a drop in the employee's overall summary performance rating (e.g., exceeds fully successful to fully successful); and
    - (b) Before any employee is given a "below" in a subelement that was marked on a prior annual appraisal at the "meets" or "exceeds" level.
  - 3. Counseling described above requires:
    - (a) Notice of a performance decrease with an explanation as to why, unless it is obvious (notice element);
    - (b) Notice that the decrease may or will result in a lower performance rating (impact element); and

- (c) An explanation of how to bring performance back up to its previous level (improvement element).
- K. In addition to an annual rating of record, all employees shall receive one progress review during the rating cycle. Generally, such progress reviews will be completed midway during the rating cycle. A written summary of this progress review shall be provided to the employee in a manner that shows the employee received it and the date the employee received it. Any acknowledgement requested from the employee indicates only that the progress review was done and will not constitute agreement by the employee with the contents of the progress review.
- L. All scored performance appraisals must contain a written narrative justification for each score given beyond simply stating that the standards have been met. If no justification is available due to the lack of an opportunity to perform in that critical element or to be observed performing, a "Not Applicable" (NA) will be awarded in lieu of any score.
- M. However, where an employee's performance has not changed since the last appraisal, the Office may revalidate an employee's prior year's appraisal.
  - 1. "Revalidate" means that management has reviewed the employee's work and has made a determination that the employee's performance is at the same level as shown on the last appraisal.
  - 2. If an appraisal is revalidated, the appraisal scores (including subelements) will remain the same and there will be no new written narrative.
  - 3. Only an employee at the full journey level in at least the second year of his or her position may receive a revalidated appraisal. For attorneys, this is the GS-14 level or GS-11 level, depending on position, and for non-attorneys it would cover employees at the top grade of their career ladder, if any.
- 4. An appraisal may only be revalidated one time. After a revalidation, the employee must be given a full evaluation at the end of the next appraisal year.
- 5. A performance appraisal may only be revalidated if the prior year's overall appraisal score is "Fully Successful" or above.
- 6. An employee may only receive a revalidated performance appraisal if the supervisor wants to give one and if the employee has not timely requested a full performance appraisal.
  - (a) If a supervisor wants to revalidate an employee's appraisal, the supervisor will notify the employee in writing no later than ten (10) days after the rating period ends.
  - (b) The employee has ten (10) calendar days after receiving such a notice to request a full performance appraisal in writing. In those circumstances, the employee will receive a regular performance appraisal with a full narrative.
- N. Annual ratings, as well as summary/departure ratings and appraisals, may be grieved under Article 33 (Employee Grievance Procedure) either within thirty (30) days of their receipt by employees or within thirty (30) days of their use in a completed personnel action (for example, when a selection has been made and announced in a competitive action).



- O. Time spent performing collateral duties not referenced in elements and standards will not be considered as a negative factor when evaluating any critical elements. For example, if a NTEU representative has spent thirty (30) percent of a work period on official time, annual leave, or leave without pay (LWOP) performing NTEU duties, this fact will be considered in the application of expected performance standards. Additionally, if an employee is performing collateral duties or NTEU representational functions that result in frequent interruptions of normal work, such factors will be taken into account when evaluating the employee.
- P. In the application of standards to individual employees, the Office will take into account mitigating factors such as availability of resources, lack of access to equipment or technology, lack of training or frequent, authorized interruptions of normal work duties.
- Q. All changes in working procedures must be communicated to employees before they can be charged with errors. If instructions were previously in writing, the Office will issue new written instructions as soon as possible.
- R. Performance appraisal forms for bargaining unit positions will be posted on the LR/Human Resources intranet page. These forms provide for the preparation of the appraisal to be completed by the first line manager.

### **Section 5 - Receipt and Notice of Elements and Standards**

- A. Employees will not be held accountable for their elements and standards until they are received.
- B. Employees will initial and date receipts for the elements and standards to show when they were received and discussed with them. Initialing does not mean that employees agree with the elements and

standards. These receipts will be maintained by the Office and copies will be available to the employees upon request.

- C. A receipt will be obtained for substantive changes to the elements and standards; for example, changes in written time deadlines or substantive changes in other written standards. This receipt will identify the changes as well as the effective date of those changes.
- D. Employees permanently assigned to new positions or work units with different elements and standards will be given a copy of those, and an opportunity to discuss them with the Office. If group meetings are held for this purpose, NTEU will be invited to attend these meetings.
- E. If group meetings are held to discuss elements and standards, employees and the designated NTEU representative will be provided copies of the elements and standards at least two (2) work days in advance of the meeting.
- F. Questions left unanswered during the meetings referenced in Subsection E, above, will normally be responded to within seven (7) days of the end of the meeting. Answers to questions raised by or of interest to the group will be communicated to the group.

### **Section 6 - New and Revised Elements and Standards**

- A. National NTEU will be provided copies of elements and standards for new positions, and be given thirty (30) days in which to comment on them. If comments are received, the Office will consider them and notify NTEU of the results of its review before implementing the elements and standards. After implementation, employees will not be



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responsible for the elements and standards until they are received.

- B. When established critical elements and standards are added or substantially changed, National NTEU will be provided copies and given thirty (30) days to comment. The Office will consider substantive comments and will bargain over the changes to the extent required by law. Employees will not be responsible for the new or revised critical elements and standards until they are received.
- C. If deletions in critical elements, standards or the aspects that make up the elements are made, National NTEU will be notified as well as the affected employee(s) and the changes will take effect immediately.

### Section 7 - Evaluative Recordations

- A. An evaluative recordation will be furnished to an employee within thirty (30) days of its development or receipt by a supervisor. If not furnished to the employee within thirty (30) days, it will not be used by the Office. Any material that may have an adverse effect on an employee's appraisal or rating by a ranking panel or official, the maintenance of which is not required by the IRM or CCDM, and that is not shared with the employee, will be removed and destroyed.
- B. Employees may make written comments concerning any disagreement with an evaluative recordation or other review document at any time prior to its use in a performance appraisal. Such comments will be attached to and become a part of the appraisal.

### Section 8 - Details

Performance appraisals will be prepared after employees have been detailed for a period of ninety (90) days or more. These

appraisals will become part of their records and will be relied upon in developing their annual performance appraisals.

### Section 9 - Use of Enforcement Statistics

The Office's current policy on the use of enforcement statistics is attached as Appendix 21-1.

### Section 10 - Workload Management

- A. Employees are encouraged to have a dialogue with their supervisors at any appropriate time about case assignments, court dockets, cross-functional work assignments or any other duties that they believe are unmanageable. If the matter remains unresolved, the employee or the employee's representative may submit their concerns in writing to the appropriate management official.
- B. NTEU has the right to request to have a dialogue about workload concerns at the Area Counsel, Division Counsel, or Associate Chief Counsel office level, as appropriate. This request may be made by NTEU either at the Chapter or NTEU National level. If workload problems are identified as a result of these discussions, the Office will consider adjusting or rebalancing work assignments, approving credit hours, compensatory time or overtime or taking other actions as appropriate.
- C. When applying performance standards, the Office will consider any increase in an employee's workload (for example, when support staff workload increases due to consolidation of work among fewer employees, or where attorney workload increases as a result of cross-assignments).

## **ARTICLE 22 – CAREER OPPORTUNITIES AND ADVANCEMENT**

### **Section 1 – Purpose of Article**

- A. It is the policy of the Office to generally promote internal applicants into vacant positions to the extent consistent with the abilities of the employees and the needs of the Office. However, the Office reserves the right to make a selection from any appropriate source.
- B. The purpose of this Article is to ensure that all competitive actions for bargaining unit positions and career ladder promotions are made in a systematic and equitable manner according to merit, in order that employees are given the opportunity to develop and advance to their full potential.
- C. The Office will continue to post and maintain information about career and developmental opportunities on the Counsel intranet.

### **Section 2 – Competitive Promotions**

It is agreed that management retains the right to assign work and determine who will perform the function discussed; therefore, whenever language in this Section specifies that a particular individual or office perform a certain task it is intended only to identify the individual or office that is responsible for handling the situation in question.

#### **A. First Consideration –**

- 1. The Office agrees to grant first consideration to Office bargaining unit employees when filling bargaining unit positions.
- 2. To assure first consideration for Office bargaining unit employees, the Office shall consider all Office bargaining unit employee applicants for any unit position covered by this

Section before the selecting official for a position may consider applications from any other sources.

- 3. No external applicant from another source may be considered until after the Office has considered bargaining unit employee applicants under this Section. Nothing in this Section prohibits the Office from simultaneously, soliciting, rating, and ranking external applicants.
- 4. Notwithstanding Section 2(B)(2) of this Article, “first consideration” (as defined in this Subsection) will be given to any current employee who applies to a posted attorney announcement.

#### **B. Actions Covered –**

- 1. The procedures described in this Section apply to the following actions for competitive service employees only:
  - (a) Filling a position by promotion;
  - (b) Filling a position by temporary promotion for more than one hundred-twenty (120) days;
  - (c) Selection for training when training is given primarily to prepare employees for advancement and the training is required for promotion;
  - (d) Filling bargaining unit positions with non-bargaining unit employees; however, if bargaining unit employees are first considered through the procedures in this Article, and/or Article 23 as applicable, then filling vacancies with non-bargaining unit employees shall be excluded from these competitive procedures.

(e) Filling a position by reassignment if a vacancy announcement has been posted, unless the Office uses any of the reassignment procedures described in Article 23.

(f) Other placement actions described in 5 CFR § 335.103(c).

2. Excepted Service –

The procedures described in this Section apply to excepted service positions only in the following two situations:

(a) A competitive promotion to a permanent bargaining unit GS-15 attorney position; or

(b) A formal temporary promotion to a bargaining unit GS-15 attorney position of more than one hundred-twenty (120) days;

C. The procedures described in this Article will not apply to the following:

1. Promotions to positions that have been upgraded without significant change in duties and responsibilities on the basis of either the issuance of a new classification standard or the correction of a classification error;
2. Re-promotion to grades or positions from which an employee was demoted within the Office without personal cause; that is, without misconduct or inefficiency on the part of the employee and not at the employee's request;
3. Promotion to a higher-graded position, a requirement of which is specific training, provided selection for such training was made in accordance with this Agreement;

4. Promotion of occupants of career ladder positions up to the full performance level;

5. Government-wide special emphasis programs (for example, Veterans Readjustment Act, Disabled Worker trainee, and Cooperative Education programs) up to and including conversion into the competitive service;

6. Any other mandatory exceptions provided for in OPM regulations or law;

7. A position change within a division from a position having known promotion potential to a position having no higher promotion potential;

8. A temporary promotion of one hundred-twenty (120) days or less;

9. An action taken as a remedy for failure to receive proper consideration in a competitive action;

10. Positions with career ladder potential to GS-4 or below; and

11. Any other position change identified in 5 CFR § 335.103(c)(2).

D. Vacancy Announcements –

1. Vacancy announcements will be published before filling any position by the competitive actions covered by this Section. To ensure that both bargaining unit employees and NTEU have access to vacancy announcements, all Office vacancy announcements will be posted on the Office's intranet for as long as the vacancy is open. Additionally, if a posted vacancy announcement is cancelled, the cancellation will be promptly posted on the Office's intranet for as long as the vacancy was originally to be open.

2. The vacancy announcements will be posted at least fourteen (14) days prior to the closing date and at a minimum will contain the following:

- (a) Announcement number;
- (b) Opening and closing dates;
- (c) Title, series, grade and number of position(s), and organizational location(s) of the position(s) to be filled, including worksite;
- (d) Any unusual conditions of employment (for example, shift work, frequent travel, etc.);
- (e) Minimum qualifications required;
- (f) Brief summary of the duties of the position together with an indication of where additional information may be obtained;
- (g) Selective placement factors, if any;
- (h) Evaluative methods to be used, including all the specific forms to be considered, the optional use of interviews, etc. No evaluative methods may be used unless listed in the vacancy announcement;
- (i) Statement of equal employment opportunity;
- (j) Where to submit applications;
- (k) Career ladder and promotion potential, when appropriate;
- (l) Time-in-grade requirements; and
- (m) Statement indicating that the position is in the NTEU bargaining unit.

Changes to a vacancy announcement of a non-substantive nature [for example, announcement number, or the number of vacancies where the increase is less than four (4)], will not require extension of the posting time.

- 3. Selective placement factors will only be used in determining eligibility when they are essential to successful performance in the position to be filled. In such cases, they will constitute a part of the minimum requirements of the position in question.
  - 4. Employees must submit an application for each vacancy for which they wish to be considered via the Treasury automated staffing system as specified in the vacancy announcement. The Office will not withdraw an employee's application for a position unless the employee requests in writing that the application be withdrawn.
  - 5. An employee who applies for a position and is not found eligible will be notified before the establishment of a "best qualified" list.
  - 6. Applicants must meet all time-in-grade requirements on the date the announcement closes.
  - 7. If a vacancy announcement is cancelled, the reason for the cancellation will be noted on the promotion certificate and/or made part of the promotion file. Upon request by NTEU, a copy of the document showing the reason will be provided.
- E. Ranking and Application Procedures-
- 1. Treasury's automated staffing system will be used to rank actions described in Section 2(B)(1) and

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there will be no separate ranking panel. A ranking panel will be used for actions described in Section 2(B)(2). Any use of the term "ranking panel" herein refers to the actions described in Section 2(B)(2).

2. In order to compete for a position under this Article, applicants must be rated at least "Fully Successful" in any critical element that is the same or similar to the critical elements of the announced position.
3. Performance appraisals may be used for a period of one (1) year from the date of the supervisor's signature.
4. The Office will consider the performance appraisal, relevant experience and training, relevant incentive awards, and such other relevant material or evaluative methods deemed necessary. The crediting plan will be applied uniformly to each applicant. For the purposes of this Article, the Office may designate the Executive Resources Board as the ranking panel for actions covered by Section 2(B)(2).
5. The type and quality of experience will be evaluated in terms of the knowledge, skills and abilities (KSA) required for successful performance on the job. Length of experience or service is only appropriate to the extent it can be shown to be a valid, job-related factor for the position being filled.
6. (a) For positions described in Section 2(B)(1), each KSA will be rated for each applicant using the ranking questions in the Treasury automated staffing system.  
  
(b) For positions described in Section 2(B)(2), the ranking panel will prepare one written narrative or statement concerning each applicant considered for each KSA of the position to be filled. If the immediate supervisor of any applicant is a member of the ranking panel, then each panel member will prepare a separate narrative. Relevant awards and training will be considered in assigning individual KSA scores. Applicants are also rated on their specialized knowledge and specialized experience.
7. Applicants will be rated and ranked on their potential to perform in the announced position. The applicant's education, training, experience, awards and performance appraisal that are related to the vacancy to be filled and the KSAs described above, will be considered. The rating and ranking process the Office uses will be in accordance with this Agreement, law, rule and regulation.
8. When performance appraisals have similar critical elements to the position being filled, credit will be given for those elements.
9. In accordance with applicable law, rules and regulation, the four applicants who rank at the top will be designated as "best qualified." The selecting official will receive the top four applicants on the "best qualified" list, plus one additional applicant for each additional vacancy. In the event of tied scores, the selecting official will receive all applicants with the top four scores on the "best qualified" list.
10. Applicants certified as "best qualified" will be submitted to the selecting official in alphabetical order.

11. Employees entitled to priority consideration under Section 2(F)(9)(a) will be considered by the selecting official prior to any first consideration process.

12. The selecting official shall make a decision to select or not select as soon as possible, but not later than thirty (30) days after issuance of the best qualified list.

13. Any ranking or selection technique utilized by the ranking panel or selecting official will be uniformly applied to all groups of applicants (for example, if one "best qualified" applicant is interviewed, all "best qualified" applicants must be interviewed).

14. Areas of general inquiry raised in the interview process will be recorded and kept in the promotion file. Where appropriate, all candidates will be asked questions concerning the same area of general inquiry. This provision does not require the Office to ask identical questions of each applicant.

15. In the case of interviews, the selecting official may participate in the interview process or delegate interviews to another individual or interview panel.

F. Miscellaneous –

1. Upon request, and consistent with the Privacy Act, NTEU shall receive the following information for any promotion package (i.e., the promotion certificate) covered by this Section:

(a) Name(s) of all eligible applicants;

(b) Name(s) of applicant(s) identified as "best qualified;"

(c) Name(s) of selected applicant(s);

(d) Name(s) of ranking official or panel members, where applicable; and

(e) Name of selecting official.

This information will be provided via the LR–NTEU Sharepoint site.

2. An employee's accumulation or balance of earned annual or sick leave, credit hours, compensatory time, or advanced leave may not be considered by the ranking panel, a selecting official, or supervisor as a basis for selection or promotion.
3. The fact that an employee is the subject of a conduct investigation will not prevent or delay the promotion that would otherwise be made, unless the Office judges that such delay is necessary to protect the integrity of the Office.
4. The Office will make a reasonable effort to return to their former or like positions employees who, within the last year, were promoted and subsequently demoted for inability to perform at the higher level.
5. An employee who is selected for promotion will have the promotion become effective no later than one (1) complete pay period following selection.
6. Any applicant who is not selected will, upon request, be entitled to counseling by the applicant's immediate supervisor and/or the selecting official, or their designees. Employee applicants will, upon request, be provided the following information about a position for which he or she applied:



- (a) Whether or not he or she made the best qualified list, his or her score, and the best qualified cutoff scores;
- (b) The ranking panel's written narrative statement (if applicable), and score assigned to the applicant;
- (c) The name of the individual who was selected; and
- (d) The names of the ranking officials or panel members, if applicable.

Such requests will be made through the applicant's immediate supervisor. Employees who apply for a position for which the vacancy announcement is cancelled will, upon request, be entitled to receive an explanation of why the vacancy announcement was cancelled. Such requests will be made through the Human Resources Division.

- 7. If, within fifteen (15) days of notification of non-selection, the employee makes such a request in accordance with Subsection 6 above, the time limits under Article 33 (Employee Grievance Procedure) will not begin until the employee is provided with the information and counseling.
- 8. (a) In resolving grievances related to actions taken under the terms of this Section, a NTEU representative representing an employee will, upon request, be furnished the "evaluative material" utilized by the Office in assessing the qualifications of the eligible applicants (including non-unit applicants) in regard to a grievance, subject to the following:

- (i) The aforementioned material consisting of the ranking documents, supervisors' appraisals, and records related to experience, training and awards will be provided to the employee's NTEU representative subject to the Office's legal responsibility and obligations to protect the crediting plan, and the privacy of eligible applicant(s) involved in the promotion in question;
- (ii) If the grievance is confined to "best qualified" applicants, only the evaluative material of such applicants will be provided; and
- (iii) If the grievance involves questions of eligibility, evaluative material of all applicants will be provided.

- (b) Challenges to the Office's action in the implementation of Subsection 8(a) above may be grieved under Article 33 (Employee Grievance Procedure) or Article 34 (Institutional Grievance Procedure and National and Consolidated Grievance Procedures) and finally resolved by an arbitrator making an "in camera" inspection of the entire promotion file to either confirm the disclosure or denial of material, or to amend same, subject to the same legal obligations and responsibilities cited in Subsection 8(a) above.
- (c) Employees may not grieve their non-selection from among a group of properly ranked and certified candidates, but may grieve procedures used to identify and rank qualified candidates.

9. (a) Unless otherwise agreed, any violation of the provisions of this Section that has the effect of denying an employee proper consideration in an action under this Section will entitle the employee to the following relief:
- (i) If an applicant was improperly or erroneously omitted from a "best qualified" list, the applicant will receive priority consideration for the next appropriate vacancy for which the applicant is qualified; and
  - (ii) Remedies, including priority consideration, may be granted as appropriate for other violations.
  - (iii) An appropriate vacancy for purposes of priority consideration is linked to the actual vacancy announcement from which consideration was lost and includes positions with no higher promotion potential and the same:
    - (1) Associate Office/Division;
    - (2) Commuting area of original vacancy;
    - (3) Title/series/grade; and
    - (4) Position type (e.g. permanent, temporary)
- (b) The Office will promptly provide employees entitled to priority consideration with a certificate or letter notifying them that they are entitled to priority consideration and stating the position(s), consistent with Subsection 9(a)(iii) above, to which they are entitled to consideration. In order to exercise their priority consideration rights, employees must identify that they are exercising those rights (this may be done by submitting the priority consideration certificate/letter), along with their application materials, when applying for an announced vacancy.
- (c) Priority consideration consists of a promotion certificate that contains an employee's name alone being sent to a selecting official before the official considers other applicants for a position. Priority consideration does not mean that the applicant must be selected. When the Office considers employees who have priority consideration pursuant to this Agreement and does not select from among the priority consideration applicants, the Office will put the reasons for non-selection in writing and serve a copy simultaneously on the employee(s).
  - (d) An employee may exercise his or her priority consideration rights one time only. An applicant, however, will be entitled to a separate priority consideration for each vacancy announcement for which that applicant was improperly considered.
  - (e) If more than one applicant is entitled to priority consideration, the names of only those employees will be submitted on a single certificate to the selecting official for the next appropriate vacancy.
  - (f) If the appropriate vacancy already has been announced, the employee(s) due the priority consideration will be considered by the selecting official before other applicants are referred for selection, if the employee identifies that they are exercising their priority consideration right.

- (g) Where an appropriate vacancy does not occur within two (2) years of the employee's receipt of the priority consideration certificate/letter, the employee will be permitted to apply for and exercise his or her priority consideration rights for any announced appropriate vacancy, as defined in Subsection 9(a)(iii), except that the post of duty of the vacancy can be expanded to include any post of duty within a 250 mile-radius of the post of duty of the original vacancy.

### **Section 3 – Competitive Service Career Ladder Promotions**

- A. Employees in competitive service career ladder positions will be promoted on the first day of the first pay period after:
  - 1. The employee becomes eligible to be promoted (after the last workday of the 52<sup>nd</sup> week in their positions or whatever lesser period satisfies regulatory requirements); and
  - 2. The employee is capable of satisfactorily performing at the next higher level.
- B. For employees whose elements and standards are no different from those of the next higher grade level in the career ladder, an overall annual rating of "Fully Successful" at the current grade will satisfy the performance requirements for a career promotion.
- C. However, employees may not receive career ladder promotions if they have a rating below "Fully Successful" on a critical element that is also critical to performance at the next higher grade of the career ladder;
- D. Additionally, as an exception to Subsection 3(A)(1) and 3(B) above, if the employee is on a performance

improvement plan (PIP) or has received an intent to deny a within grade increase letter, the Office will delay the career ladder promotion until the employee receives notice that they are performing at a fully successful level, and such determinations by the Office will be promptly provided to the employee.

- E. The Office will provide competitive service employees who may noncompetitively advance in grade upon completion of applicable performance and time-in-grade criteria with notice if promotions are being delayed or withheld.

### **Section 4 – Special Designations or Appointments**

- A. When the Office determines that it is necessary to formally designate or appoint a bargaining unit employee to one of the following positions, the Office will first solicit and consider interested employees within the appropriate office or post of duty before making any such designation or appointment. The Office will provide an explanation, upon request, to any non-selected interested employee or any involuntarily reassigned employee. This Subsection applies to the following positions:
  - 1. Industry Program Counsel;
  - 2. International Field Counsel; and
  - 3. SAUSA (Special Assistant United States Attorney).
- B. If a bargaining unit employee no longer wishes to serve in one of the special designations or appointments set forth in Subsection (A), the employee is encouraged to discuss this issue with his or her manager at any appropriate time. Management will then consider whether to use the procedures set forth in Subsection (A) to formally designate

or appoint another bargaining unit employee to this position. Upon request, the Office will provide a written explanation to an employee for any denial of the employee's request made under this Section.

### **Section 5 – Notice Regarding Attorney Honors Program**

The procedures of this Article do not apply to the Attorney Honors Program. To ensure that bargaining unit employees are aware when the Office is seeking candidates for bargaining unit positions via the Attorney Honors Program, notice will be posted on the Office's intranet.

## **ARTICLE 23 – REASSIGNMENT OF EMPLOYEES**

### **Section 1 – Definitions**

A. For purposes of this Article:

1. "Reassignment" means a permanent change of an employee, while serving continuously within the Office, from one position to another regardless of whether the movement is within or between posts of duty (PODs) without promotion or involuntary demotion.
2. The types of reassignments available through the processes of this Article include, but are not limited to:
  - (a) Reassignment to a different Counsel organization (Division Counsel, Associate Chief Counsel, Counsel to the National Taxpayer Advocate) at the same or a different POD (from one Associate Chief Counsel organization to another, from an Associate Chief Counsel to a Division Counsel or vice versa, or from one Division Counsel to another);

(b) Reassignment to a different POD within the same Division (e.g., to move from TEGE in Brooklyn to TEGE in Chicago);

(c) Reassignment to a specific geographical location without regard to Counsel organization; or

(d) Reassignment to a different Associate Area Counsel group at the same POD, or different branch or workgroup within the same POD, or a different branch or workgroup within the same Associate Chief Counsel organization.

3. "Hardship" is an adverse personal situation identified by an employee that can be ameliorated by a specific reassignment to a different duty location.

B. Reassignments will not be made for disciplinary purposes, except where subject to the Article 31 (Disciplinary Actions) and Article 32 (Adverse Actions) procedures as applicable.

### **Section 2 – First Consideration**

- A. The Master First Consideration List is the sole mechanism by which employees receive first consideration for voluntary reassignment. Applications to an announced vacancy that would constitute a promotion for the applicant are covered under Article 22, and are not subject to this Article.
- B. When the Office decides to fill a bargaining unit position the Office will review and consider all materials for any bargaining unit employee on the Master First Consideration List for a particular Division or Associate office and POD.
- C. The Office agrees to grant first consideration to Office bargaining unit

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employees when filling bargaining unit positions by reassignment. To assure first consideration for Office employees, the Office shall consider all employees on the Master First Consideration List for a particular Division or Associate office and POD before filling any position via competitive or external means, subject to the provisions of this Article. No external applicants will be considered until after the Office has considered the employees on the Master First Consideration List. Nothing in this Article prohibits the Office from simultaneously soliciting, rating and ranking external applicants.

- D. This “first consideration” rule does not apply to the Attorney Honors program.

### **Section 3 – Master First Consideration List Procedures**

#### A. Eligibility:

1. An employee may add his or her name to the Master First Consideration List at any time.
2. Any employee (GS-14 or below) who has completed his or her probationary or trial period with Counsel and has a fully successful appraisal may add his or her name to the Master First Consideration List.
3. A GS-15 Senior Counsel with a fully successful appraisal may put his or her name on the Master First Consideration List for hardship purposes or when such employee’s request also includes a specific statement that he or she will consent to a voluntary change to lower grade to GS-14 upon selection.
4. An employee requesting a hardship reassignment may still be within his or her probationary or trial period but

must be functioning at a fully successful level.

- B. Maintenance of the Master First Consideration List: The Human Resources Division will maintain the Master First Consideration List. The Office will remind employees on a semiannual basis about the application process for the list. This reminder will cite this Article and Section of the Agreement. The Office will also provide a copy of this reminder to National NTEU.
- C. Application Process: To be placed on the Master First Consideration List, an employee must submit the following to the Director of the Human Resources Division:

1. A short statement of interest or cover letter which includes his or her name and current position and POD;
2. A current resume;
3. A copy of his or her most recent appraisal;
4. A list of up to five (5) Associate offices or branches, or five (5) field PODs and Division offices or groups (for example, Austin POD-SBSE) where the employee would like to be reassigned; and
5. For employees who want to change branches or groups in the same Associate office or Division and POD, a statement of the reason for the request. Generally, a request will not be granted if the sole reason for the request is to change managers.

#### D. Duration of Application

Names will be kept on the Master First Consideration List for twelve (12) months following their submission. If an

employee wants his or her name to continue to be considered after the expiration of twelve (12) months, then the employee must submit another request with updated attachments.

#### **Section 4 – How Master First Consideration List is Used**

The Master First Consideration List is used in three different circumstances:

- (1) Review of Requests for Hardship Reassignments;
- (2) Reassignments with Announced Vacancy; and
- (3) Review of Requests for Voluntary Reassignments Where There are no Announced Vacancies.

The rules regarding each use of the Master First Consideration List are explained below:

##### **A. Review of Requests for Hardship Reassignments**

1. An employee who submits evidence of a hardship may submit his or her request to be added to the Master First Consideration List for reassignment at any time during the calendar year. Hardship requests will be specially notated on the Master First Consideration List.
2. Requests for hardship reassignment under this Section must:
  - (a) Clearly state that the request is for a hardship reassignment;
  - (b) Include documentation or written description of the situation that gives rise to the hardship request;

(c) Include the same information as required by Section 3(C) above; and

(d) State whether the employee is willing to accept a position at a lower grade (e.g. a GS-15 Senior Counsel who would be willing to accept a GS-14 attorney position or a GS-7 support staff employee willing to accept a GS-6 position).

3. The Office will review all hardship requests at least twice per year.
4. Hardship requests will be considered and given priority over any other request on the Master First Consideration List. In appropriate circumstances, considering the nature of the hardship, the budget and staffing impacts, and other Office needs, the Office may grant hardship requests in situations even when the Master First Consideration List would not come into play.

##### **B. Reassignments with Announced Vacancy**

1. When the Office decides to announce and post a vacancy at or below the GS-14 level (either just to employees within the agency or to outsiders also), employees who wish to be considered for a voluntary reassignment to that vacancy should apply to the vacancy announcement via the Master First Consideration List. This does not preclude an employee from applying to the vacancy as a promotion, if applicable, under Article 22 through normal application procedures.
2. This means that three groups of employees will be considered for the vacancy: employees whose names were already on the Master First Consideration List for such a position prior to the vacancy announcement



being issued, employees who put their name on the Master First Consideration List for reassignment to the position by applying to the Master First Consideration List, and employees who apply to the vacancy as a merit promotion under Article 22 through normal application procedures.

3. The vacancy announcement for any such reassignment opportunity will inform employees who are eligible for reassignment that they should apply via the Master First consideration List in order to receive first consideration for purposes of being voluntarily reassigned to the vacancy. The vacancy announcement will state whether relocation expenses will be paid. There will be no geographical restrictions for applications for reassignments to an announced vacancy made through the Master First Consideration List.
4. An employee's "home" Associate office or Division (the losing Associate office or Division) does not have the discretion to deny a reassignment when there is an announced vacancy and the "home" office will not be involved in making the selection.

**C. Review of Requests for Voluntary Reassignments Where There are No Announced Vacancies**

1. The Master First Consideration List can also be used as a mechanism to review employee requests for voluntary reassignments where there are no announced vacancies. In these circumstances, the Office would have no current intent to fill any bargaining unit positions but the Office would be willing to review requests by employees who want to

voluntarily transfer to another Associate / Division office or POD.

2. In these circumstances, all names (and corresponding requests) on the Master First Consideration List would be reviewed and considered by the Office. The Office will do such a review at least twice each calendar year.
3. The Office has the discretion to decide whether to grant or deny any such request and will take into consideration the needs of the Office (including the work needs of the organization where the employee currently works). An employee's "home" Associate office or Division (the losing Associate office or Division) does not have the discretion to deny a reassignment when there is no announced vacancy. Although the "home" office cannot veto or deny a reassignment, the Office can take into consideration input from the "home" office.
4. The Office will notify all bargaining unit employees by email in advance each time it intends to use the Master First Consideration List under this Subsection.

**Section 5 – Rules that Apply to All Reassignments under This Article**

- A. An employee who receives a reassignment through the Master First Consideration List process, except for reassignments under Subsection 4(B), should expect a reasonable transition period before the reassignment becomes effective (generally no more than sixty (60) days).
- B. Employees who receive a reassignment through the Master First Consideration List or hardship process outside of their commuting areas must pay their own relocation expenses, unless otherwise

authorized in the vacancy announcement. The Office will allow, in accordance with applicable travel regulations, administrative leave for employees to travel to the new commuting area.

- C. Acceptance of a reassignment at the same grade will not affect an employee's eligibility for noncompetitive grade increase or a within grade increase. It will also not increase an employee's employment commitment.
- D. The Office will provide National NTEU a list of all the names of the employees currently on the Master First Consideration List two times per calendar year, including their Associate Office or Division, post of duty, and the date they were placed on the list. This list will also identify employees who were reassigned using the Master First Consideration List (and the hardship process) since the prior list and their home office and "gaining" office, the date the employee was placed on the list and the date the reassignment became effective.
- E. Reassignment requests by qualified employees generally should not be denied solely on the grounds that the requesting employee lacks experience in the Division or Associate office to which he or she is applying. The Office will provide an employee, upon request, with a written explanation for a denial.

### **Section 6 – Office Initiated Intra Divisional Reassignments**

- A. When the Office determines it is necessary to reassign employees within a Division or Associate office within the same POD to meet workload demands, staffing imbalances, or other Office needs, the following process will apply (instead of using the Master First Consideration List):

- 1. The Office will determine the appropriate area of consideration from which it will solicit volunteers and accept applications. The Office will cite this Article and Section of the Agreement when soliciting volunteers under this Section. For these purposes, the appropriate area of consideration will include employees who possess the necessary grade, skills, and qualifications.
- 2. If there are too many qualified volunteers, the Office will reassign from among the pool of qualified volunteers.
- 3. If there are insufficient qualified volunteers, the Office may involuntarily reassign any employee within the Associate or Division office within the same POD.
- 4. Upon selection of employees, the Office will provide notice to the employees who received the initial solicitation of the names and reassignments of the selected employees.

- B. This Section also applies to reassignments from a Division Counsel Headquarters office to any other office within the same commuting area.
- C. The Office will provide an explanation, upon request, to any nonselected interested employee or any involuntarily reassigned employee.

### **Section 7 – Office-Initiated Reassignments outside a Division / Associate Office But Within POD**

- A. The Office will notify National NTEU and the local Counsel steward/s (or NTEU Chapter 251 President if the impacted POD is Washington, DC) at least thirty (30) days in advance that the procedures in this Section will be used

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each time the Office determines to reassign employees in the same series outside a Division / Associate Office but within the same POD.

- B. As part of the notice, the Office will inform NTEU about the number of employees needed, the Division / Associate office to which they will be reassigned, and the Division / Associate office(s) from which employees will be solicited.
- C. NTEU will be given the opportunity to meet with Office representatives to discuss this matter and will be given a five (5) calendar day period after the meeting to suggest different options to the Office. The Office will respond to any NTEU suggestions within five (5) calendar days, and prior to implementing any reassignment.
- D. The Office will solicit the bargaining unit employees in the POD to see if there are any volunteers willing to be reassigned to the new organization, and this may be done while the procedures in Subsection 7(A) above are taking place.
- E. The Office will do so by sending an email notice to qualified bargaining unit employees in the POD. Management will determine the qualifications for who will be sent this email notice including, but not limited to, years of experience, skills and performance level. The qualifications will be included in the notice to employees.
  - 1. If there are any qualified volunteers, the Office will reassign those employees. If there are too many qualified volunteers, the Office will reassign from among the pool of qualified volunteers based on seniority (EOD). The Office will not reassign employees until after the time periods in Subsection 7(A) above have passed.
  - 2. If there are insufficient qualified volunteers, the Office may (after the time periods in Subsection 7(A) above have passed) involuntarily reassign the needed number of qualified employees within the group by inverse seniority (reverse EOD).
- F. The Office will do the following for any employees involuntarily reassigned to a new organization under this process:
  - 1. Provide fourteen (14) days' notice before the reassignment takes place;
  - 2. For field employees, the employees will physically remain in the same desk/office location after the reassignment;
  - 3. For National Office employees, consider whether the employee may physically remain in his/her desk/office location even after the reassignment. If the Office decides that, for work-related reasons, the employee must physically move to a new desk/office, the employee would be eligible to "bump" under Article 46, Section 9. The Office will grant reassigned employees reasonable duty time to move if the reassignment requires a change in the employee's office or desk location.
  - 4. Provide the training the Office deems appropriate consistent with Article 26;
  - 5. Take the reassignment to a new Associate/Division Counsel office into consideration as a mitigating factor for a full year after the reassignment when preparing the employee's appraisal / mid-year review;
  - 6. Relieve them from any commitment period; and

7. For purposes of Article 48, Section 2(C), this is an involuntary reassignment and impacted bargaining unit employees will not be subject to a waiting period for telework as a result of being reassigned to a new Division or Associate Office.

G. The Office will continue to honor any reasonable accommodation granted to any employee who is reassigned.

A. The Office will honor any pre-approved leave requests of reassigned employees, consistent with Article 9.

### **Section 8 – Involuntary Reassignments Beyond a POD**

Except to the extent permitted by law, the Office will not involuntarily reassign any employee to another POD without first bargaining impact and implementation issues with NTEU.

### **Section 9 – Reestablished Positions**

- A. When employees have been reassigned due to abolishment of their positions, they will be given priority consideration as defined in Article 22 (Career Opportunities and Advancement) if the position is reestablished in the same post of duty within two (2) years and they apply for the position within fifteen (15) days after written notification to them of its reestablishment.
- B. If there are two (2) or more applicants who meet the position requirements for the reestablished position, the applicants will be listed in entry on duty date (EOD) order. The applicant with the earliest EOD will receive priority consideration for the position.

### **Section 10 – Reorganization of Divisions**

Reassignments due to the reorganization of an entire Division or Associate office will be

addressed within the context of any negotiations over the particular reorganization. Nothing in this Article will serve to waive the right of NTEU to propose procedures for such reassignments, or to propose arrangements for adversely affected employees, provided such arrangements are not inconsistent with any other provision of this Agreement.

## **ARTICLE 24 - DETAILS**

### **Section 1**

For purposes of this Article, "detail" means the temporary assignment of an employee to a different position for a specified period, with the employee returning to regular duties at the end of the detail.

### **Section 2**

- A. Details of at least one (1) pay period will be formally documented by the placement of a SF-52 in the employee's Official Personnel Folder.
- B. An employee who is formally detailed to a position of higher grade for at least one (1) pay period will be temporarily promoted, if eligible, and receive the rate of pay for the position to which temporarily promoted.

### **Section 3**

This Section provides for two types of formal details: Office-initiated details and employee-initiated developmental details.

#### **A. Office-Initiated Details**

1. If the Office determines to formally detail employees into bargaining unit positions for sixty (60) days or more in order to meet temporary workload needs, staffing imbalances, or other Office needs, the following process will apply:

## ARTICLE 25

- (a) The Office will determine the appropriate area of consideration from which it will solicit volunteers and accept applications. For these purposes, the appropriate area of consideration will include employees who possess the necessary grade, skills, and qualifications.
- (b) If there are too many qualified volunteers, the Office will select from among the pool of qualified volunteers. The Office will provide an explanation upon request to any non-selected volunteer.
- (c) If there are insufficient qualified volunteers, the Office may involuntarily detail any employee within the same post-of-duty.
- (d) Absent exigent circumstances, the Office will not involuntarily detail an employee to another post-of-duty without first bargaining with NTEU.

- 2. For Office-initiated details, the Office will pay appropriate expenses for details outside of the post-of-duty (travel, per diem, trips home, etc.).

### B. Employee-Initiated Developmental Details

The Office will consider employee requests for developmental details.

- 1. Eligibility - to be eligible, an employee must have:
  - (a) Completed his or her trial period, and
  - (b) A current rating of record of fully successful or above.

- 2. Process - the following process will apply to employee-initiated developmental details:

- (a) The employee must request a developmental detail through his or her first-line manager.
- (b) The request should include the function(s) and the types of work the employee would like to perform during the detail.

### 3. Types of Developmental Details

- (a) Swap Details: A detail where two or more Counsel organizations agree to a temporary one-for-one “swap” of employees for an agreed upon period of time.
- (b) Non-Swap Details: A detail where employees apply to temporarily work for another office. The receiving office would not “swap” another employee.

- 4. Employee-initiated developmental details may not involve any non-local travel-related expenses.

- 5. The Office will consider all employee-initiated requests. The Office retains the discretion to accept or deny such requests. In making such decisions, both the home and receiving offices must agree regarding any employee-initiated developmental detail.

## **ARTICLE 25 - POSITION CLASSIFICATION**

### **Section 1**

NTEU may make recommendations and present supporting evidence concerning the adequacy and equity of a standardized position description. The Office will review the presentation and advise NTEU of the results of its review.



## Section 2

- A. The Office will inform NTEU as soon as possible when significant changes will be made in the duties and responsibilities of positions held by employees in the unit due to reorganization, or when changes in position classification standards result in classification changes.
- B. If the Office of Personnel Management refers proposed classification standards for bargaining unit positions to the Office for comment, the Office will furnish such proposed standards to NTEU.
- C. Within sixty (60) days of the effective date of this Agreement, the Office will furnish National NTEU with one copy in electronic form of all position descriptions for all bargaining unit positions. Thereafter, the Office will follow the procedure in Section 2(D).
- D. Whenever substantive changes (changes in duties, series, or grade) are made to position descriptions for bargaining unit positions, before their issuance the Office will provide one copy in an electronic form (or written notice about the change) to National NTEU. For all other changes to position descriptions, the Office will provide on a quarterly basis one copy of each revised position description(s) in an electronic form (or written notice about the change) to National NTEU.

## Section 3

The position description for each position will accurately reflect the actual duties, responsibilities, and the supervisory relationships pertaining to the employee filling that position.

## Section 4

An employee who has filed a formal classification appeal is entitled to one

representative at a desk audit relating to the appeal. The Office will grant official time to the NTEU representative and the employee for the classification appeal and any preparatory time for the classification appeal and for any meetings held with the Office about the desk audit.

## ARTICLE 26 - TRAINING

### Section 1

- A. The training and development of employees within the unit is a matter of significant importance. Accordingly, the Office will, as funds permit, make available to employees the training the Office deems necessary for the performance of the employees' presently assigned duties or proposed assignments.
- B. If the Office decides at some time in the future to use a system of tests and written assessments for employees in trainee or developmental positions, the Office will, if required by law, provide notice to National NTEU and negotiate to the extent required by law using the procedures in Article 45.
- C. The Office will encourage employees in planning and following plans of self-development.
- D. The parties recognize the importance of developing employees in the performance of all tasks assigned to their positions. Therefore, the Office will consider employees' requests to enhance their experience in all tasks assigned to their positions.
- E. Where management has determined that an employee should have a particular type of training but the employee is unable to attend the training due to work needs, the Office will consider reassigning work so that the employee can attend the training.



## Section 2

- A. The Office will maintain information and furnish counseling and guidance about suitable and available educational resources. NTEU, on its part, will encourage employees to take advantage of suitable self-development opportunities.
- B. The Office will make available to employees current listings of IRS and Department of Justice training programs, including correspondence and after hours in-service courses, if any.
- C. The Office will list the training courses it offers on the Enterprise Learning Management Systems (ELMS) website or its successor.
- D. Each employee (particularly non-attorney support personnel) will be entitled to establish an Individual Development Plan (IDP) with assistance and advice provided by a manager. The primary emphasis of the plans will be: first, to address the skills needed by employees in their current positions; second, to prepare them for new career opportunities; and third, to address the skills needed for advancement beyond their current journey level in positions within the Office of Chief Counsel. Although the primary responsibility for executing an IDP for career advancement falls with the employee, the Office will provide advice and assistance. The IDP will state particular goals and the employee and the Office will make a good faith effort to work towards these goals. For employees who have an approved IDP the Office shall make reasonable efforts, consistent with workload and staffing needs, to approve up to sixteen (16) hours per calendar year for non-attorneys for self-directed training or development activities, if such activities are related to the employee's current or prospective job duties.

## Section 3

The Office will provide training to all employees whose positions are abolished or significantly reengineered as a direct result of organizational restructuring, work elimination, introduction of new duties, transfer of work, or implementation of new technology before evaluating employees on new duties. Whenever possible, such training will occur or be identified and scheduled within six (6) months.

## Section 4

- A. Each fiscal year, the Office will establish a fund based on availability of funds and consistent with the Training Act, 5 USC Chapter 41 (referred to as the Human Resources Investment Fund or HRIF) to assist Office employees who take outside educational job-related courses designed to develop and enhance the employee's skills. The fund will be administered and divided as explained in this Section.
- B. The overall program guidelines are as follows:
  - 1. Employees must have completed their probationary year and have a current performance appraisal of at least fully successful in order to participate in the HRIF program.
  - 2. In classes in which grades are received, employees must receive at least a "C" (or "pass" in any courses graded on pass/fail system) in order to be eligible for consideration in future years for HRIF funding.
  - 3. Employees who receive HRIF funding but fail to satisfactorily complete the training may be required to reimburse the Office for an amount equal to the HRIF funding except that if the employee's failure is based on a documented medical

or emergency circumstance, no reimbursement is required.

4. Each Counsel employee will be provided information regarding the opening and closing date for applying to the program, program guidelines, instructions on how to apply, and notification of selection or non-selection.
5. There will be no more than two (2) opportunities per fiscal year for employees to apply to receive HRIF funding.

C. The Office and NTEU will at a national level jointly review all applications. The Office retains the ability to determine general eligibility and priority ranking using the principles set forth in this Article, but NTEU can provide recommendations and input in this process.

1. If employees within a category of eligibility satisfy all criteria but there are insufficient funds to reimburse all applicants, NTEU will make a recommendation to the Office on which courses will be funded. If the Office does not agree with NTEU's recommendation, funding will be given to applicants with the earliest Counsel entrance-on-duty date (EOD).
2. Notification of which courses are funded will be sent jointly by the Office and NTEU.
3. The maximum amount an employee can receive in HRIF funding per year is \$2000 for clerical support employees and other non-attorneys and \$1000 for attorneys. Within this yearly limit, the Office will pay up to the full cost to the employee of each course, if possible. If more than 5% of the funds have not been distributed to applicants by the end

of the fiscal year, the Office and National NTEU will meet to determine a method of distribution for the remaining funds.

4. At least 50% of the HRIF funding under this Article will be available for clerical support employees and non-attorneys.
5. For attorneys, first priority will be given to courses in tax law or job-related legal education courses, and second priority will be given to other courses which relate to or support the mission of the Office.
6. For clerical support employees and other non-attorneys, first priority will be given to courses that directly relate to the applicant's current position, and second priority will be given to courses that relate to a position within the Office for which the applicant could reasonably expect to develop the skills to be competitive (such as paralegal or office manager).

D. The types of courses for which employees may apply to receive HRIF funding include, but are not limited to, the following:

1. CPA review courses;
2. LL.M. courses;
3. Courses in tax law or other job-related legal courses, which can include continuing legal education (CLE) courses;
4. Paralegal courses;
5. Automation or computer courses such as WORD, Excel, etc.;
6. Organization skills or time management courses;

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7. Courses on presentations skills;
  8. Courses in data analysis; and
  9. Secretarial skills courses.
- E. Employees may apply for HRIF funding for courses taken at a variety of learning institutions (e.g., courses offered by law schools, universities, community colleges, on-line or e-learning courses, and courses from private vendors).
- F. Employees may receive up to twenty-four (24) hours of administrative leave for CLE courses per calendar year as explained in Article 12 (Administrative Leave), Section 5(B). If this twenty-four (24) hour allotment per calendar year is not otherwise used, employees may receive up to twenty-four (24) hours of administrative leave per calendar year for actual class time spent in courses which receive HRIF funding provided that the actual class time occurs during the employee's regularly scheduled tour of duty. Administrative leave for any such courses will be granted following the rules set forth in Article 12 (Administrative Leave), Section 5(B).

### Section 5

The Office will seek continuing legal education accreditation from each state and the District of Columbia and will pay any sponsorship/registration fees for any Office-sponsored symposium designed for GS-905 series employees. These symposiums will include any National Office Training Division-sponsored symposiums. For other courses offered by the Office, the Office will assist employees from all jurisdictions, upon request, in obtaining bar accreditation.

### Section 6

- A. When training is given primarily to prepare employees for promotion, the Office will follow 5 CFR § 410.307.

- B. The Office will annually solicit volunteers on an Office-wide basis to serve as members of an instructor cadre for Office-sponsored training for that year. Although the Office has the discretion to determine who will serve as an instructor, the Office will consider the names on the instructor cadre list. The factors that the Office may consider include but are not limited to: instructor availability, teaching experience, subject matter expertise (including technical training), and prior student evaluations. The Office will consider rotating instructor assignments.

### Section 7

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

### Section 8

The Office will provide NTEU with advance notice of training sessions attended by bargaining unit employees. The Office will cooperate with requests from NTEU for space, use of facilities, or other minor accommodations if NTEU wishes to meet with bargaining unit employees during non-duty portions of any such training sessions.

### Section 9

In making expenditures of outside training funds, the Office will consider paying for job-related legal education courses for employees who are required to be licensed to practice law.

### Section 10

All Revenue Agents employed by the Office will be reimbursed for 50% of Certified Public Accountant (CPA) review courses in the following circumstances:

1. The employees are not CPA's;

2. The Revenue Agents have not been previously reimbursed for all or part of these courses by the Office or any other government agency;
3. All provisions of the Government Employees Training Act, 5 USC § 4101 *et seq.*, have been met; and
4. Sufficient funding is available.

## **ARTICLE 27 - NOTICES TO EMPLOYEES**

### **Section 1**

- A. An employee who receives from the Office:
  1. A notice of proposed adverse action;
  2. A notice of decision to take adverse action;
  3. A notice of disciplinary action;
  4. A notice of decision to take disciplinary action;
  5. A notice of reduction in force;
  6. A notice issued to the employee pursuant to Section 2(b) of Article 29 (Acceptable Level of Competence Determinations) respecting within-grade increases;
  7. A notice of decision to deny a within-grade increase;
  8. A notice of proposed removal or reduction in grade or pay for unacceptable performance;
  9. A notice of decision to remove or reduce in grade or pay for unacceptable performance;
  10. A letter issued to the employee pursuant to Section 2 of Article 30 (Unacceptable Performance), respecting opportunity periods;

11. A leave restriction letter;
12. A notice of involuntary reassignment to another post of duty (other than a SF-50);
13. A notice of reclassification of the position the employee occupies (other than a SF-50);
14. A written request for information concerning employee alleged underreporting or non-filing; or
15. A notice concerning career ladder/career advancement referenced in Article 22 (Career Opportunities and Advancement), Section 3(D), will receive concurrently a copy of such notice that states at the top of the first page,

“THIS COPY MAY AT YOUR OPTION BE FURNISHED TO NTEU. NTEU CAN ADVISE YOU ABOUT WHETHER YOU ARE ABLE TO FILE A GRIEVANCE OVER OR OTHERWISE CONTEST THIS MATTER.”

### **Section 2**

The Office will provide each employee for each pay period a written statement showing pay, deductions, and leave status together with the total cumulative yearly earnings and total cumulative deductions in each category.

## **ARTICLE 28 – PROBATIONARY EMPLOYEES**

### **Section 1**

The Office will advise probationary employees of their performance proficiency in relation to the Office’s performance expectations at three (3) month intervals during the first year of employment. If the Office has determined to terminate a probationer, the letter of termination will be provided to the probationary

## ARTICLE 29

employee prior to the expiration of the probationary period and will advise the employee of his or her statutory appeal rights.

### Section 2

The provisions of this Agreement apply to probationary employees, except those provisions that would be inconsistent with law, rule, or regulation.

### Section 3

A probationary employee may elect to submit a voluntary resignation in lieu of termination at any time prior to the date of his/her termination. If an employee has received a letter of termination due to poor performance and the probationary employee voluntarily resigns before the effective date of the termination, the employee's Official Personnel Folder will only reflect the voluntary resignation.

## **ARTICLE 29 - ACCEPTABLE LEVEL OF COMPETENCE DETERMINATIONS**

### Section 1

- A. Acceptable level of competence determinations will be made in a fair and objective manner and will be made only on the basis of the work requirements of the particular position or specific work standards as may have been established by the Office for that position; provided, however, that a determination that an employee is not performing at an acceptable level of competence will not be used to dispose of questions of misconduct. In accordance with applicable law, employees will be advanced in pay to the next higher step of their grade upon meeting the following requirements:
1. The employees must have completed the required waiting period;
  2. The employees must not have received an equivalent increase in

pay during the required waiting period; and

3. The employee's annual rating of record must be at least "Fully Successful."

### Section 2

- A. If employees have not been informed of the critical elements and performance standards of their positions at least ninety (90) days before completion of the waiting period, and if the employees have not met the requirement of Section 1(A)(3) above, the within grade determinations will be postponed until ninety (90) days from the date on which the employees have been informed of those elements and standards. If at the end of this period it is determined that the employees' work is at an acceptable level of competence, the within-grade increases will be made retroactively as of the date the waiting period was completed.
- B. When a supervisor's review leads to the conclusion that an employee's work is not of an acceptable level of competence and that a within-grade would be denied, the employee will be provided with the following in writing within a reasonable period of time, but not less than sixty (60) days, before the employee will have completed the required waiting period:
1. Notice of the critical element(s) and standard(s) in which the employee's work is not acceptable;
  2. Advice as to what the employee must do to bring performance up to the acceptable level;
  3. A statement that the employee's performance may be determined as being at an unacceptable level unless improvement to an overall acceptable level is shown; and

4. A statement that the employee's within-grade increase will be withheld unless the employee's work during the entire waiting period is at an acceptable level of competence.
- C. The supervisor will consider the employee's performance during this notice period.

### Section 3

- A. Acceptable level of competence determinations will be given to employees, in writing, after completion of the waiting period or other periods (such as postponements) on which they are based.
- B. If the employee's performance is determined to be acceptable, the notice provided in Subsection 2(B), above, will be canceled.

### Section 4

When the supervisor determines that an employee's performance is not at an acceptable level of competence for a within-grade increase, the supervisor will notify the employee in writing. This notice will:

- A. Give the reasons for the negative determination and the specific areas in which the employee must improve in order to be granted a within-grade increase; and
- B. Inform the employee of the right to request, within fifteen (15) days from receipt of the determination, that the determination be reconsidered, in accordance with 5 USC § 5335(c), by an appropriate Office official (usually the next higher level supervisor). The notice should also caution the employee that if the employee's performance is currently unacceptable or falls to an unacceptable level, the employee may be removed, reduced in grade, or reassigned.

### Section 5

- A. If an employee files a request for reconsideration, the Office official to whom the reconsideration is made will establish an employee reconsideration file containing all the pertinent documents relating to the negative determination and the employee's request for reconsideration. An employee must file a request for reconsideration in order to invoke the grievance/arbitration procedures.
- B. The reconsideration file may not contain any document of which the employee, or representative, is not aware, and to which they have not had an opportunity to submit a written exception.
- C. The Office will provide a copy of the reconsideration file to NTEU upon request if NTEU is designated as the employee's representative.

### Section 6

- A. The Office official will provide the employee with a prompt written final decision (usually within fifteen (15) days).
- B. When a negative determination is sustained after reconsideration, the written notice will inform the employee of:
  1. The reason for the decision; and
  2. The right to grieve the decision.
- C. Any alleged violation of the terms of this Article that results in a new acceptable level of competence determination will provide for retroactivity of any pay increase unless prohibited by applicable law or higher agency regulation.



## Section 7

- A. Neither the substantive nor the procedural aspects of this Article may be grieved until an acceptable level of competence determination is final, except as provided in Subsection B, below. The acceptable level of competence determination will be considered final when a reconsideration decision is due or issued. A reconsideration decision will be considered due thirty (30) days from the date of the Office's receipt of an employee's written request for reconsideration. The grievance procedure will begin one step above the reconsideration official. If the reconsideration official also represents the final step of the grievance procedure, the level of competence determination is appealable directly to arbitration.
- B. In the event an employee disagrees with the Office's determination whether the employee has satisfied the within-grade waiting period, the employee may grieve the denial of the within-grade increase within thirty (30) days of the Office's determination.

## Section 8

During the life of this Agreement, the Office will provide National NTEU and post on the LR-NTEU Sharepoint site sanitized copies of written notices referenced in this Article, any decision letter, and any reconsideration letters. This information will normally be posted within ten (10) days after their issuance to bargaining unit employees. Information provided by the Office under this Section need not be provided again to any NTEU representative pursuant to any statutory or contractual request.

## **ARTICLE 30 - UNACCEPTABLE PERFORMANCE**

### Section 1

- A. An action based on unacceptable performance, for the purpose of this Article, is defined as the reduction-in-grade or removal of an employee whose performance fails to meet established performance standards in one or more critical elements of the employee's position.
- B. This Article applies only to competitive service bargaining unit employees who have completed their probationary periods and to excepted service bargaining unit employees who have completed one year of current continuous employment in the same or similar positions. However, excepted service employees, other than preference eligibles, are not entitled to appeal rights to MSPB or arbitration until they have completed two years of continuous service in a permanent position.
- C. No bargaining unit employee will be the subject of an action based on unacceptable performance unless that employee's performance fails to meet established performance standards in one or more critical elements of the employee's position.
- D. Prior to any meeting between an employee and a supervisor or other line management official during which the principal topic of discussion is an unacceptable performance removal or proposed action based on unacceptable performance (such as a meeting where a proposal, decision, or performance improvement opportunity period [PIP] letter is issued), the employee will be informed that a NTEU steward may be present at the meeting. The employee will be given time to arrange for a steward to be present at the meeting so

long as it does not unduly delay the meeting. This provision does not apply to performance counseling sessions or meetings held during a PIP period.

- E. Any action based on unacceptable performance will be fair, equitable, and timely.

## Section 2

- A. Before issuing a notice of proposed action based on unacceptable performance, the Office will issue a letter to the employee that will contain the following:
  1. An identification of the critical elements and performance standards for which performance is unacceptable;
  2. Specific ways that the employee can improve, which will bring his/her performance up to an acceptable level;
  3. A statement that the employee has a reasonable period of time (specified in calendar days) but never less than ninety (90) days in which to bring performance up to an acceptable level; and
  4. A description of what the Office will do to assist the employee to improve the unacceptable performance during the opportunity period.
- B. Neither NTEU nor employees may raise under Article 33 (Employee Grievance Procedure) either the substance or procedural aspects of this notice until a final decision is issued.

## Section 3

- A. In all cases of proposed action based on unacceptable performance, the employee will be given written notice identifying the specific instances of

unacceptable performance on which the proposed action is based thirty (30) days in advance of the decision.

- B. The employee will be given the opportunity, but will not be obliged, to respond orally and/or in writing before a decision on the charges, provided the employee requests an oral reply within fifteen (15) days of receipt of the letter of proposed action, and provided that any such oral and/or written reply is received by the Office within twenty-one (21) days after receipt of the letter.
- C. If the employee elects to make an oral reply, the Office will make a verbatim transcript and will provide a copy to the employee or designated NTEU representative upon completion of the transcript. At the conclusion of the oral reply, the employee may provide a written statement of all factual disputes to be addressed in the decision letter.
- D. The advance written notice proposing either to remove or downgrade an employee for unacceptable performance will include:
  1. Specific instances of unacceptable performance by the employee on which the proposed action is based;
  2. The critical element(s) of the employee's position involved in each instance of unacceptable performance;
  3. The performance standard(s) involved in each instance of unacceptable performance of the employee's position;
  4. A statement of the employee's right to be represented by an attorney and/or representative;
  5. A statement of the employee's right to answer orally and/or in writing; and

6. A statement of the employee's right to obtain and review copies of the material relied upon to support the reasons in the notice.

#### Section 4

- A. An employee will, upon request, be furnished a copy of all written documents, reports, data, transcripts, video or audio tapes or any other materials relied on by the Office that form the basis for the reasons and specifications.
- B. If the action is based on an investigative report, the entire report and any attached documents, data, transcripts, video or audio tapes, or exhibits that are provided to the Office will be furnished to the employee or the employee's representatives upon request.
- C. If probable cause exists and is demonstrated to the arbitrator by NTEU on appeal that favorable information provided for in Subsection B, above, has not been furnished by the Office, upon request of the arbitrator the report will be furnished for "in camera" inspection to be made in conformity with the Privacy Act (5 USC § 552a). Material determined by the arbitrator to be favorable under the criteria of Subsection B, above, and not previously furnished to NTEU will be furnished to NTEU.
- D. Nothing in this Section is to be construed as a waiver of the employee's or NTEU's right to request additional information under other authorities such as the Freedom of Information Act, Privacy Act, or Civil Service Reform Act, except as otherwise provided in Section 6.

#### Section 5

- A. An official who sustains the proposed reasons against an employee in an action based on unacceptable

performance will set forth findings with respect to each reason and specification against the employee in the final decision letter. Such letter will address factual disputes, if any, raised by the employee's reply by stating the reasons why each factual dispute was rejected.

- B. An action in which an employee has been removed or downgraded based upon unacceptable performance must be supported by substantial evidence.
- C. The final decision in the case of a proposed action to either remove or downgrade an employee based on unacceptable performance will be made no later than thirty (30) days after the expiration of the advance notice period, and will be based only on those instances of unacceptable performance by the employee that occurred during the one (1) year period ending on the date of the advance notice letter.
- D. The final decision regarding a proposed action based on unacceptable performance will be made by an official in a higher position than the official who proposed the action.
- E. If the employee is not reduced in grade or removed, and the employee's performance is acceptable for one (1) year from the date of the advance written notice letter, all entries or other notification of the unacceptable performance for which the action was proposed will be removed from all agency records relating to the employee.

#### Section 6

- A. If the Office's final decision is to effect an action based on unacceptable performance against a bargaining unit employee, the employee may appeal the decision to the Merit Systems Protection Board (MSPB) in accordance with applicable law or, with the consent

of NTEU, to binding arbitration. Under no condition may an employee appeal an action based on unacceptable performance to both MSPB and arbitration. Excepted service employees, other than preference eligibles, are not entitled to these appeal rights until they have completed two years of continuous service in a permanent position. If NTEU consents to directly appeal an adverse action taken under this Article to arbitration, NTEU must give the Office notice of its decision within thirty (30) days of the employee's receipt of the Office's final decision.

- B. The invocation of arbitration must be given by certified mail, fax, e-mail or by hand delivery to the Director, Labor and Employee Relations. Notice of appeal by certified mail, fax, or e-mail will be effective as of the date the notice is mailed or transmitted and notice of appeal by hand delivery will be effective when received. Receipt of notice of appeal by fax may be established by proof of fax. Receipt of notice of appeal by e-mail may be established by proof of delivery.
- C. The burden of proof in any arbitration over this matter will be substantial evidence. The Office will raise no work deficiencies against the employee other than those cited in the notice of proposed action, except to the extent necessary to rebut defenses or arguments raised on the employee's behalf, such as an argument that the cited cases are but a small portion of the employee's total work product that is otherwise acceptable.
- D. During the life of this Agreement, the Office will provide National NTEU and post on the LR-NTEU Sharepoint site sanitized copies of unacceptable performance proposal and decision letters. This information will normally be posted within ten (10) days after their

issuance to bargaining unit employees. Information provided by the Office under this Section need not be provided again to any NTEU representative pursuant to any statutory or contractual request.

## **ARTICLE 31 - DISCIPLINARY ACTIONS**

### **Section 1**

- A. For the purposes of this Agreement, disciplinary actions are defined as admonishments, written reprimands, and suspensions of fourteen (14) days or less.
- B. This Article applies to bargaining unit employees (including excepted service employees who have completed two years of continuous service in a permanent position) who have completed their probationary or trial period.
- C. Discipline will be administered in as timely a manner as possible. For example, the Office will make a timely decision following any employee response to a proposed disciplinary action and communicate that decision in writing to the employee and his/her representative.
- D. No bargaining unit employee will be subject to discipline except for such cause as will promote the efficiency of the service.

### **Section 2**

- A. NTEU will be given the opportunity to be present at any examination of an employee in the unit by a representative of the Office in connection with an investigation if:
  - 1. The employee reasonably believes that the examination may result in disciplinary action against the employee; and

2. The employee requests representation.

- B. Prior to any meeting between an employee and the supervisor or other line management official during which the principal topic of discussion is discipline (such as a meeting where a disciplinary letter is issued or a proposal or decision letter on a disciplinary suspension is issued), the employee will be informed that a NTEU representative may be present at the meeting. The employee will be given time to arrange for a representative to be present at the meeting so long as it does not unduly delay the meeting.
- C. Generally, there is no right for an employee to have a union representative present when a performance appraisal is discussed or there is some other performance-related discussion. If during the course of a performance-related meeting between an employee and management the discussion turns to the employee's conduct and if because of the questions asked the employee reasonably believes that discipline could result from the meeting, the employee has the right to stop the meeting and request union representation.

### Section 3

In deciding what action may be appropriate, the Office will give due consideration to the relevance of any mitigating and/or aggravating circumstances. The following factors, included herein for purposes of illustration, are neither meant to be exhaustive nor intended to be applied mechanically, but rather to outline the tolerable limits of reasonableness:

- A. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical and

inadvertent, or was committed maliciously or for gain, or was frequently repeated;

- B. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- C. The employee's past disciplinary record;
- D. The employee's past work record; including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- E. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties;
- F. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- G. The notoriety of the offense or its impact upon the reputation of the Office;
- H. 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;
- I. Potential for the employee's rehabilitation;
- J. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
- K. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

**Section 4**

- A. An employee will, upon request, be furnished a copy of all written documents, reports, data, transcripts, video or audio tapes or any other material relied on by the Office that form the basis for any disciplinary action.
  - B. If the discipline is based on an investigative report, the entire report and any attached documents, data, transcripts, video or audio tapes, or exhibits that are provided to the Office will be furnished to the employee or the employee's representative upon request.
  - C. If probable cause exists and is demonstrated to the arbitrator by NTEU on appeal that information provided for in Subsection (A) or (B), above, has not been furnished by the Office, upon request by the arbitrator the report will be furnished for an "in camera" inspection to be made in conformity with the Privacy Act. Material determined by the arbitrator to meet the criteria of Subsection (A) or (B), above, and not previously furnished to NTEU will be furnished to NTEU.
  - D. Nothing in this Section is to be construed as a waiver of the employee's or NTEU's right to request additional information under other authorities such as the Freedom of Information Act, Privacy Act, or Civil Service Reform Act.
- 2. An employee has the right, but is not obliged, to make an oral and/or written reply provided that: (a) if the employee wishes to make an oral reply, he or she requests to do so within ten (10) days of the employee's receipt of the letter of proposed action, and (b) the oral and/or written reply must be received by the Office within a reasonable period of time after the employee's receipt of the letter of proposed action;
  - 3. The oral reply will be postponed until the information referred to in Section 4(A) and 4(B) above (material relied upon and investigative report, if any) is furnished to the employee and/or NTEU. If NTEU has timely requested this information, the employee/NTEU will have a reasonable amount of time, not less than three (3) workdays, to review the information; and
  - 4. The Office will issue a final decision after the receipt of the oral and/or written reply, or the termination of the twenty (20) day notice period. This letter will state which reasons and specifications are sustained and will address factual disputes, if any, raised by the employee's reply by stating the reasons why each factual dispute was rejected.

**Section 5**

- A. When the Office proposes to suspend an employee for fourteen (14) days or less, the following procedures will apply:
  - 1. The Office will provide the employee with at least twenty (20) days advance written notification of the proposed suspension;
- B. At the conclusion of the oral reply, the employee may provide a written statement of all factual disputes to be addressed in the decision letter.
- C. If the employee elects to make an oral reply, the Office will prepare a verbatim transcript of the oral reply and will provide copies to the employee and the designated NTEU representative.



**Section 6**

- A. In cases where a suspension is proposed for reasons of off-duty misconduct, the Office's written notification will contain a statement of the nexus between the off-duty misconduct and the efficiency of the service. The notice will describe why and how there is a connection between the specific off-duty misconduct and the efficiency of the Service.
- B. The Office may amend or change its nexus statement at any time before the issuance of a decision letter. If the Office elects to change or modify its nexus statement, the employee will be informed of such changes or modifications in writing.
- C. The employee will have a reasonable period of time to respond to the new statement of nexus. Such response may be oral or in writing. Where an oral response is submitted, the Office will make a written summary of the response and serve a copy on the employee and the employee's representative upon completion of the transcript. The employee and/or employee's representative will have a reasonable period of time to respond to the summary.
- D. After the issuance of the decision letter, the Office may amend or change its nexus statement under the following circumstances:
  - 1. Where there is newly discovered evidence that was not discoverable earlier with the exercise of due diligence. Under this circumstance, the Office will expeditiously notify the employee's representative or the employee, if unrepresented, of its intention to rely on a new nexus theory because of the newly discovered evidence. If it becomes necessary to delay or cancel an

arbitration hearing because of NTEU's need to respond at hearing to this new nexus theory, and if the Office's notification to NTEU of the new nexus theory occurs within seven (7) days of a scheduled hearing, the Office and NTEU will equally share the expenses of a cancellation fee; or

- 2. Where a change occurs in applicable case law or statute after the issuance of the decision letter.
- E. Nothing in this Section will preclude the Office from responding to or rebutting any evidence, arguments, or defenses raised by or on behalf of the employee.
- F. Letters of official reprimand that are based on reasons of off-duty misconduct will also state a nexus between such misconduct and the efficiency of the service.

**Section 7**

- A. An official who sustains the proposed reasons and specifications against an employee in a disciplinary suspension will set forth findings with respect to each reason and specification against the employee in the notice of decision. Such notice will also address factual issues, if any, raised by the employee's reply by stating the reasons why each factual dispute was rejected.
- B. If the deciding official decides that an employee will be suspended for a period of fourteen (14) days or less, the suspension will take effect as soon as possible after the receipt by the employee of the final decision, but no sooner than seven (7) days after receipt by the employee of the decision, unless the parties agree otherwise.
- C. Suspensions of employees of between four (4) and fourteen (14) days will be stayed if NTEU invokes arbitration within

seven (7) days after receipt by the employee of the decision. If arbitration is timely invoked under this provision, the suspension will be stayed pending the arbitration decision.

- D. Suspensions of three (3) days or less may be grieved at the final step of the employee grievance process.
- E. Suspensions of four (4) to fourteen (14) days may be appealed directly to arbitration within seven (7) days if a stay is requested or thirty (30) days if a stay is not requested.
- F. Any invocation of arbitration must be given by certified mail, fax, e-mail, or by hand delivery to the Director, Labor and Employee Relations. Notice of appeal by certified mail, fax and e-mail will be effective as of the date the notice is mailed or transmitted and notice of appeal by hand delivery will be effective when received. Receipt of notice of appeal by fax may be established by proof of fax. Receipt of notice of appeal by e-mail may be established by proof of delivery.
- G. If a timely grievance or invocation of arbitration is not received by the Director, Labor and Employee Relations, the decision of the Office may not be appealed under the terms of this Agreement.
- H. The burden of proof in any arbitration over a disciplinary action will be substantial evidence.

## **ARTICLE 32 - ADVERSE ACTIONS**

### **Section 1**

- A. An adverse action, for the purpose of this Article, is defined as a removal; a suspension for more than fourteen (14) calendar days, including indefinite suspensions; a reduction in grade; a reduction in pay, and a furlough of thirty (30) days or less of a full-time

employee. This Article does not apply to a reduction in grade or a removal based on unacceptable performance as defined in 5 USC § 4303.

- B. This Article applies to bargaining unit employees (including excepted service employees who have completed two years of continuous service in a permanent position) who have completed their probationary or trial period.
- C. No bargaining unit employee will be subject to an adverse action except for such cause as will promote the efficiency of the service.
- D. NTEU will be given the opportunity to be present at any examination of an employee in the unit by a representative of the Office in connection with an investigation if:
  - 1. The employee reasonably believes that the examination may result in disciplinary action against the employee; and
  - 2. The employee requests representation.
- E. Prior to any meeting between an employee and the supervisor or other line management official during which the principal topic of discussion is a proposed adverse action against the employee or a final decision on the proposed adverse action (such as a meeting where a proposal or decision letter is issued), the employee will be informed that a NTEU representative may be present at the meeting. The employee will be given time to arrange for a representative to be present at the meeting so long as it does not unduly delay the meeting.
- F. In deciding what action may be appropriate, the Office will give due consideration to the relevance of any

mitigating and/or aggravating circumstances. The following factors, included herein for purposes of illustration, are neither meant to be exhaustive nor intended to be applied mechanically, but rather to outline the tolerable limits of reasonableness:

1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical and inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. The notoriety of the offense or its impact upon the reputation of the Office;
8. 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;

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

G. Absent statutory authority, the Office agrees that it will not adopt or maintain a policy which mandates that the penalty imposed be removal for any particular infraction or offense because such a policy would negate application of the above criteria.

## Section 2

- A. In all cases of proposed adverse action, the employee will be given written notice stating the specific reasons for the proposed action thirty (30) calendar days in advance of the action, except as provided in (C) below.
- B. In all cases of proposed adverse action, except as provided in (C) below, the employee will be given the opportunity but will not be obliged to respond orally and/or in writing to the charges before a decision on the charges, provided the employee requests an oral reply within fifteen (15) days of receipt by the employee of the letter of proposed action and provided that the Office will receive an employee's oral and/or written reply within a reasonable time after receipt by the employee of the letter of proposed action.

C. In cases of proposed removal or indefinite suspension where the Office 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 before a decision is provided; however, that the employee's oral and/or written reply must be received by the Office within seven (7) days of receipt by the employee of the advance written notice.

D. The oral reply will be postponed until the information referred to in Section 4(A) and 4(B) below (material relied upon and investigative report, if any) is furnished to the employee and/or NTEU. If NTEU has timely requested this information, the employee/NTEU will have a reasonable amount of time, not less than five (5) days, to review the information.

E. If the employee elects to make an oral reply, the Office will prepare a verbatim transcript of the oral reply and will provide a copy to the employee and the designated NTEU representative upon completion of the transcript.

### Section 3

A. In cases where an adverse action is proposed for reasons of off-duty misconduct, the Office's written notification will contain a statement of the nexus between the off-duty misconduct and the efficiency of the service.

B. 1. The Office may amend or change its nexus statement at any time before the issuance of a decision letter. If the Office elects to change or modify its nexus statement, the employee

will be informed of such changes or modifications in writing.

2. The employee will have a reasonable period of time to respond to the new statement of nexus. Such response may be oral or in writing. Where an oral response is submitted, the Office will make a written summary of the response and serve a copy on the employee and the employee's representative upon completion of the transcript. The employee and/or employee's representative will have a reasonable period of time to respond to the summary.

C. After the issuance of the decision letter, the Office may amend or change its nexus statement under the following circumstances:

1. Where there is newly discovered evidence that was not discoverable earlier with the exercise of due diligence. Under this circumstance, the Office will expeditiously notify the employee's representative or the employee, if unrepresented, of its intention to rely on a new nexus theory because of the newly discovered evidence. If it becomes necessary to delay or cancel an arbitration hearing because of NTEU's need to respond at hearing to this new nexus theory, and if the Office's notification to NTEU of the new nexus theory occurs within seven (7) days of a scheduled hearing, the Office and NTEU will equally share the expenses of a cancellation fee; or
2. Where a change occurs in applicable case law or statute after the issuance of the decision letter.

#### **Section 4**

- A. An employee will, in any adverse action and upon request, be furnished a copy of all written documents, reports, data, transcripts, video or audio tapes or any other material relied on by the Office that form the basis for the reasons and specifications.
- B. If the adverse action is based on an investigative report, the entire report and any attached written documents, data, transcripts, video or audio tapes, or exhibits will be furnished to the employee or the employee's representative upon request.
- C. If probable cause exists and is demonstrated to the arbitrator by NTEU on appeal that information provided for in Subsection (B) above, has not been furnished by the Office, upon request by the arbitrator the report will be furnished for an "in camera" inspection to be made in conformity with the Privacy Act. Material determined by the arbitrator to meet the criteria of Subsection (B), above, and not previously furnished to NTEU will be furnished to NTEU.
- D. Nothing in this Section is to be construed as a waiver of the employee's or NTEU's right to request additional information under other authorities such as the Freedom of Information Act, Privacy Act, or Civil Service Reform Act.

#### **Section 5**

- A. An official who sustains the proposed reasons and specifications against an employee in an adverse action will set forth findings with respect to each reason and specification against the employee in the notice of decision. Such notice will also address factual disputes, if any, raised by the employee's reply by stating the reasons why each factual dispute was rejected.

- B. At the conclusion of the oral reply, the employee may provide a written statement of all factual disputes to be addressed in the decision letter.

#### **Section 6**

- A. If the Office'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 (MSPB) in accordance with applicable law, or, with the consent of NTEU, to binding arbitration. Under no condition may an employee appeal an adverse action to both MSPB and arbitration.
- B. If NTEU consents to directly appeal an adverse action to arbitration, NTEU must give the Office notice of its decision within thirty (30) days of the employee's receipt of the Office's final decision. If an invocation of arbitration is not timely served on the Director, Labor and Employee Relations, the action may not be grieved or appealed to arbitration.
- C. Any invocation of arbitration must be given by certified mail, fax, e-mail, or by hand delivery to the Director, Labor and Employee Relations. Notice of appeal by certified mail, fax and e-mail will be effective as of the date the notice is mailed or transmitted and notice of appeal by hand delivery will be effective when received. Receipt of notice of appeal by fax may be established by proof of fax. Receipt of notice of appeal by e-mail may be established by proof of delivery.
- D. If a timely invocation of arbitration is not received by the Director, Labor and Employee Relations, the decision of the Office may not be appealed under the terms of this Agreement.

- E. The burden of proof in any arbitration over adverse actions will be the preponderance of evidence.

## **Section 7**

The Office will provide to National NTEU and post on the LR-NTEU Sharepoint site an annual disciplinary action report which contains sanitized information summarizing all disciplinary and adverse actions imposed on Office employees. This Section does not waive NTEU's right under 5 USC § 7114(b) to make information requests relating to disciplinary or adverse actions.

## **ARTICLE 33 - EMPLOYEE GRIEVANCE PROCEDURE**

### **Section 1 - Objectives and Purposes**

- A. The Office and NTEU recognize and endorse the importance of bringing to light and adjusting problems promptly and whenever possible, informally. The parties also endorse the concept that complaints, dissatisfactions, and disputes should be raised in a timely manner and resolved at the lowest administrative level on an informal basis where possible.
- B. This Article does not apply to institutional grievances or national grievances governed by Article 34 (Institutional Grievance Procedure and National and Consolidated Grievance Procedures).
- C. Employees shall not be subject to retaliation as a result of their participation in the grievance process.
- D. Employees who believe they have been illegally discriminated against on the basis of race, color, religion, sex, national origin, age, or disabling condition have the right to raise the matter under the statutory procedure or the negotiated procedure of this Article, but not both. Employees will be

deemed to have exercised their right of choice at such time as they timely file a formal written EEO complaint or file a timely grievance under this procedure. When the employee elects to raise the matter under this negotiated grievance procedure, the grievant will specify the specific nature of the discrimination (for example, race, religion) and the facts upon which the allegation is based.

### **Section 2 - Definitions**

- A. For the purpose of this Article, grievance means any complaint:
  1. By any employee in the bargaining unit concerning any matter relating to the employment of the employee;
  2. By NTEU concerning any matter relating to the employment of any bargaining unit employee; or
  3. By an employee or NTEU concerning:
    - (a) The effect or interpretation, or a claim of a breach of the collective bargaining agreement; or
    - (b) Any claimed violation, misinterpretation, or misapplication of any law, rule or regulation (including internal agency regulations) affecting conditions of employment.
    - (c) Nothing in this provision is intended to expand the statutory definition of grievance found in 5 USC § 7103.
- B. The following matters are specifically excluded from the coverage of this Article:
  1. A claimed violation of subchapter III of Chapter 73 of Title 5 (relating to prohibited political activities);



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2. Retirement, life insurance, or health insurance;
3. A suspension or removal pursuant to 5 USC § 7532, dealing with national security;
4. An examination, certification, or appointment; or
5. The classification of any position that does not result in the reduction in grade or pay of any employee.

### Section 3 - General Employee Grievance Procedures

- A. This procedure will be the exclusive procedure available for the processing and disposition of grievances, except when the employee has a statutory right of choice; that is, adverse actions, actions taken for unacceptable performance, or EEO complaints.
- B. Procedures under this Article may be initiated by employees either singly or jointly. NTEU may initiate procedures in accordance with this Article or under Article 34 (Institutional Grievance Procedure and National and Consolidated Grievance Procedures). The Office may initiate grievances only in accordance with Article 34 (Institutional Grievance Procedure and National and Consolidated Grievance Procedures).
- C. Where an employee has raised a grievance under this Article without being represented by NTEU, NTEU will have a right to be present at all discussions between the employee and the Office concerning the matter. The parties will resolve all grievances presented under such circumstances consistent with the terms and conditions of this Agreement. In addition, the steward appointed to represent the organizational segment of the grieving employee will be served with a copy of

the Office's grievance decision on the same day that the response is served on the grieving employee.

- D. Employees will have the right to be accompanied, represented, and advised by the authorized representative of NTEU as set forth in the steps enumerated below. NTEU representatives who grieve on their own behalf may select the NTEU representative of their choice.
- E.
  1. In the event that two or more employees have designated NTEU to serve as their representative on one or more grievances involving substantially the same facts and the same issue or NTEU has filed grievances on behalf of two or more employees involving substantially the same facts and the same issue, the following numbers of grievants may attend:
    - (a) Three (3) grievants if the grievance involves more than one but less than twenty (20) employees; and
    - (b) Four (4) grievants if the grievance involves twenty (20) or more employees.
  2. In such an event, there will be one meeting per work unit at Step 1 and only one meeting at succeeding steps.
- F. The intent of this grievance procedure shall be that the first step in a grievance shall be heard by the grievant's immediate supervisor and the final step should be heard by the Division Counsel or Associate Chief Counsel who supervises the employee. The parties recognize that, in some organizations, there are limited management levels between bargaining unit employees and the Division Counsel or Associate Chief Counsel. Therefore, the Office will have either a

two-step or three-step grievance process depending upon the levels of management in any given organization.

- G. The appropriate grievance levels for Office employees are shown on the chart attached to the Agreement as Appendix 33-1. The proper grievance levels will be determined based on which Division or Associate Counsel office the bargaining unit employee is in at the time the grievance is filed. If the organization of a Division Counsel or Associate Chief Counsel office changes in a manner which affects the grievance levels during the term of this Agreement, either party may (at their option) reopen negotiations over Appendix 33-1.
- H. The parties may mutually agree to transfer a grievance filed at Step 1 that involves matters outside the control of the division/organization where the employee is currently working and which cannot be resolved by the immediate manager. The grievance will then be heard by the appropriate division/organization.
- I. If a grievance is filed concerning office space, the grievance will be a two-step process. Step 1 will be heard by the Managing Counsel of the post of duty (Field) or the Division/Associate Chief Counsel (National Office), as applicable, and the final step will be heard by the Associate Chief Counsel (Finance & Management) or designee.

#### **Section 4 - Specific Employee Grievance Procedure (Steps)**

The parties are encouraged to seek informal resolution of complaints or dissatisfactions. Accordingly, such matters may be brought to the attention of the employee's supervisor for informal resolution. The informal process is voluntary. Either party (management or NTEU) may raise settlement as an option at any time in the grievance process. In the event a satisfactory resolution cannot be

reached, the parties may utilize the grievance process described below

#### **Step 1:**

- A. An employee or NTEU may file a grievance. The grievance must be in writing and must be filed with the employee's immediate supervisor. While no particular form is required, an employee or NTEU may, at their option, use the Grievance Form (Appendix 33-2). If the Grievance Form is not used, the written submission must clearly state that it is a grievance. The grievance must be filed within thirty (30) days after the incident which gave rise to the grievance or within thirty (30) days after the grievant became aware of the matter. The grievance will provide information concerning the issue and the remedy sought. The parties may then request a meeting or agree that no meeting be held. If either party requests a meeting, it will take place within fourteen (14) days of the filing of the Step 1 grievance.
- B. The meeting will be with the immediate supervisor (or designee), any other management representative the Office deems necessary, and the grievant and/or the grievant's NTEU representative. Additional NTEU representatives may be allowed to attend the meeting as observers. Such observers will be on bank time and are not entitled to travel expenses. If no grievance meeting is held, a written decision will be given to NTEU within fourteen (14) days following the filing of the written grievance. If a meeting is held, a written decision will be given to NTEU within fourteen (14) days after the grievance meeting is held.
- C. A grievant or NTEU may appeal an adverse decision to Step 2 of the grievance procedure or to the Final Step when there is no Step 2 deciding official (See Counsel Grievance Levels,

Appendix 33-1). If the Appendix lists no Step 2 deciding official, the grievant or NTEU must submit the appeal directly to the Final Step official within fourteen (14) days of receiving the Step 1 decision.

**Step 2:**

- A. To appeal the Step 1 decision, the grievant or NTEU must submit an appeal to the appropriate Step 2 official (See Appendix 33-1, Counsel Grievance Levels) within fourteen (14) days of receiving the decision. The parties may request a meeting or agree that no meeting be held. If either party requests a meeting, it will take place within twenty-one (21) days of the appeal. If no Grievance Form was used at Step 1, then all relevant information from the form must be provided by NTEU and/or the Grievant either on the form or in the written grievance in order to proceed to Step 2 or higher in the grievance process.
- B. The meeting will be with the person with whom the appeal is filed (or designee), any other management representatives the Office deems necessary, and the grievant and/or the grievant's steward and/or the National Steward. Additional NTEU representatives may be allowed to attend the meeting as observers. Such observers will be on bank time and are not entitled to travel expenses. If no meeting is held, a written decision will be given to NTEU within twenty-one (21) days of the filing of the appeal. If a meeting is held, a written decision will be given to NTEU within twenty-one (21) days after the grievance meeting was held.

**Final Step:**

- A. An adverse decision at Step 1 or Step 2 may be appealed at the Final Step (as appropriate). The appeal must be in writing and filed with the Division

Counsel or Associate Chief Counsel within fourteen (14) days of receiving the decision. The parties may request a meeting or agree that no meeting be held. If either party requests a meeting, it will take place within thirty (30) days of the appeal.

- B. The meeting will be with the Division or Associate Chief Counsel (or designee), any other management representative the Office deems necessary, the grievant, up to three (3) representatives designated by NTEU, and a NTEU National/Field Representative. If no meeting is held, the written decision will be given to NTEU within thirty (30) days of the filing of the appeal. If a meeting is held, a written decision will be given to NTEU within thirty (30) days after the date of the grievance meeting.

**Section 5 - Right to and Notice of Arbitration**

NTEU may invoke arbitration if it is dissatisfied with the Final Step decision rendered by the Office. Within thirty (30) days of receipt of the Final Step decision, NTEU must notify the Director, Labor and Employee Relations, of the invocation by certified mail, return receipt requested, e-mail, fax, or by hand delivery. Notice by certified mail, facsimile, or e-mail will be effective as of the date the notice is mailed or transmitted and notice of appeal by hand delivery will be effective when received. Receipt of notice of appeal by fax may be established by proof of fax. Receipt of notice of appeal by e-mail may be established by proof of delivery.

**Section 6 - Miscellaneous**

- A. The parties may agree in writing to waive any step of this grievance procedure.
- B. The parties may agree to extend time limits delineated in this Article.

- C. Grievances, appeals, and step responses may be served by certified mail, return receipt requested, by hand-delivery, by fax, or by e-mail.
- D. Time periods set forth in this Article will begin the day after the receipt by the Office of a formal grievance or an appeal and the day after the receipt by NTEU of a response. If the last day of any time period falls on a Saturday, Sunday, or federal holiday or a day on which either the grievant's and/or appropriate management office is closed because of emergency conditions, such time period will expire at the close of business of the next business day.
- E. Responses will be served on the appropriate NTEU representative and the employee.
- F. The Office will render a written substantive response to each issue raised by NTEU. If management has not provided a response, NTEU can request a specific response or move to the next step at their election. Failure to provide a response on an issue will not result in NTEU winning that issue solely on this basis.
- G. NTEU agrees to submit virtually all contract-related matters to the negotiated grievance procedure for final disposition and to use sparingly unfair labor practice procedures concerning contract-related issues which may occur in the day-to-day administration of this Agreement.
- H. Meetings under this Article will be scheduled at a time agreeable to the parties, during the employee's normal tour of duty. Meetings will also be held at a mutually agreeable location. Employees and NTEU representatives (not including observers) will be allowed, insofar as practicable, to travel to meetings during their normal tours of duty on official time.
- I. All Step 1 Grievance Meetings: All Step 1 meetings will be face-to-face. Travel and per diem costs (if any) of the grievants and of Counsel employees who are the designated NTEU representatives (not including observers) will be paid by the Office for travel in connection with a Step 1 grievance meeting. If the designated representative is the NTEU National Steward, and the National Steward is not within the local commuting area, the grievance meeting will be held via video conference or LIVE meeting/Lync.
- J. Step 2 and Final Step Grievance Meetings Within the Same Post of Duty: When all parties to a grievance meeting are located in the same post of duty, all meetings at all other steps will also be face-to-face. The Office will pay all necessary local travel costs of grievants and of Counsel employees who are the designated NTEU representatives attending the meetings.
- K. Step 2 and Final Step Grievance Meetings Involving More Than One Post of Duty: When all parties to a grievance meeting are not located within the same post of duty, the Step 2 or Final Step meeting will be held via video conference or LIVE meeting/Lync.
- L. Failure on the part of the aggrieved or NTEU to prosecute the grievance at any step of the procedure will have the effect of nullifying the grievance. Failure on the part of the Office to meet any of the requirements of the procedure will permit the aggrieved or NTEU to move to the next step. At the option of either party, meetings will be held not more often than once a quarter to discuss concerns with the timely processing of grievances.

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- M. The parties may not withhold evidence during the resolution of a grievance. Newly discovered evidence must be introduced at any step of the proceeding before arbitration.
- N. Pending grievances involving the same issues must be assigned to the same arbitrator.
- O. Absent agreement by the parties, new issues may not be raised by either party unless they have been raised at the Step 2 of the grievance procedure. If there is no Step 2, new issues must be raised at the Final Step.
- P. If the Office raises an issue of grievability or arbitrability, the grievance will be amended to include a resolution of this issue in the processing of the grievance.

### Section 7 – Prohibited Personnel Practices

Consistent with 5 USC § 7121(b)(2)(A), if a grievance alleges a prohibited personnel practice, an arbitrator may order a stay on the personnel action in a manner similar to the manner described in 5 USC § 1221(c) with respect to the Merit Systems Board.

## **ARTICLE 34 - INSTITUTIONAL GRIEVANCE PROCEDURE AND NATIONAL AND CONSOLIDATED GRIEVANCE PROCEDURES**

### Section 1 - Purpose

The purpose of this Article is to establish an orderly and uniform procedure for the processing and disposition of institutional grievances stemming from application of this Agreement.

### Section 2 - Definitions and General Provisions

- A. "Institutional Grievance (NTEU)" means any complaint by NTEU concerning the effect or interpretation, or a claim of breach, of this Agreement relating to the

rights and benefits that accrue to NTEU as the exclusive representative of bargaining unit employees. Grievances relating to individual employees, or that relate to the employment of employees, or that concern any claimed violation, misinterpretation, or misapplication of any law, rule or regulation affecting conditions of employment of employees are not institutional grievances within the meaning of this procedure.

- B. "Institutional Grievance (Office)" means any complaint by the Office alleging a breach of this Agreement by NTEU, its officers or agents.
- C. NTEU Grievances must be filed in writing with the Director, Labor and Employee Relations, within thirty (30) days of the incident that gave rise to the grievance, or within thirty (30) days from the time NTEU learned or should have learned of the matter out of which the grievance arose.
- D. Grievances filed by the Office must be signed by the Director, Labor and Employee Relations, or designee, and be filed with the appropriate representative designated by NTEU within the same time limits.
- E. Grievances under this Article must: (1) cite the Agreement provision alleged to have been violated; (2) describe the violation with sufficient specificity to advise the other party of the nature of the harm; and (3) state the remedy sought.
- F. Any time limits specified for each step of this procedure will be computed from the day after the receipt of a grievance or an appeal by the other party and from the day after the receipt of a response by the moving party.
- G. Time limits may be extended, and any step of this procedure may be waived by written agreement of the parties.



- H. Whenever a grievance is processed through a step where, for any reason, no meeting is held, the responding party will issue its response for such step within twenty-one (21) days of the submission of the grievance to that step.
- I. Failure by the moving party to comply with the provisions of this procedure will have the effect of nullifying the grievance for lack of prosecution. Failure by the responding party to comply with the provisions of this procedure will permit the other party to move to the next level.

### **Section 3 - Procedure**

#### Step 1:

- A. Within fourteen (14) days of the filing of the grievance, the Director, Labor and Employee Relations, or designee (and any other management representative deemed necessary to the Office), will meet with the appropriate NTEU representative or designee (and any other NTEU representative deemed necessary) to discuss the grievance.
- B. Within fourteen (14) days of the meeting, the responding party will issue a written Step 1 response to the grieving party.
- C. If the moving party is not satisfied with the Step 1 response, it may file an appeal with the next higher level of the responding party (Step 2) within fourteen (14) days of the receipt of the Step 1 response.

#### Step 2:

- A. Within fourteen (14) days of the filing of the appeal, the Associate Chief Counsel (Finance and Management), or designee (and any other management representative deemed necessary to the Office), will meet with the appropriate NTEU representative or designee (and

any other NTEU representative deemed necessary) to discuss the grievance.

- B. Within fourteen (14) days of the meeting, the responding party will issue a written Step 2 response to the grieving party.
- C. If the grieving party is not satisfied with the Step 2 response, it may invoke arbitration pursuant to Section 6 below.

### **Section 4 - National NTEU Grievance Procedure**

- A. The NTEU's National President may file grievances as provided in this Section. For purposes of this Section only, the term "grievance" means a grievance concerning an issue of rights afforded to employees under this Agreement which otherwise would be cognizable only as separate grievances from two (2) or more Divisions or Associate Chief Counsel Offices over identical issues.
  - 1. Such grievances must be in writing and filed with the Director, Labor and Employee Relations, within thirty (30) days of the date the NTEU became aware, or should have become aware, of the issue grieved.
  - 2. If an individual grievance would not have been considered timely at the time a National grievance is filed, the Office may assert that any such individual employee is not entitled to receive relief under the National NTEU grievance procedure.
  - 3. Upon presentation of a proper and timely grievance under this Section, any related individual grievances shall be held in abeyance. If the resolution of the National NTEU grievance addresses the issues raised in the individual grievances, the outcome of the National NTEU



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grievance will govern the individual grievances.

- B. Within fourteen (14) days of the filing of the grievance, a meeting will be held between representatives of the parties (Step 1). Within fourteen (14) days of the Step 1 meeting, the Office will issue a written decision on the grievance.
- C. The Office's Step 1 decision is appealable to the Associate Chief Counsel (Finance and Management) within fourteen (14) days of its receipt by the NTEU. A meeting will be held between representatives of the parties within fourteen (14) days of the filing of the appeal (Step 2).
- D. The Office's Step 2 decision is appealable to arbitration.
- E. No travel and per diem expenses will be paid for any bargaining unit employees who attend national NTEU grievance meetings however, up to two (2) bargaining unit employees may receive official time for attending any such meetings.

### **Section 5 - Consolidated National Grievance Procedure**

- A. The parties recognize that certain grievances may involve issues that cross Counsel organizational lines.
- B. If individual grievances are filed in two (2) or more different Associate offices and/or Division Counsel offices concerning the same matter and/or underlying issues, the National President of NTEU or designee or the Associate Chief Counsel (Finance and Management) may request that all such individual grievances be consolidated into a national grievance. The consolidation of any such grievances will be subject to the following rules:

- 1. Only those grievances which have been timely filed may be considered for consolidation and relief.
- 2. Both parties agree that all requests for consolidation will be granted absent unusual circumstances. The first step in any consolidated national grievance will be heard by the Director, Labor and Employee Relations. The final step in any consolidated national grievance will be heard by the Associate Chief Counsel (Finance and Management).
- 3. If NTEU is dissatisfied with the final step decision in any consolidated national grievance, NTEU may invoke arbitration in accordance with Article 35 (Arbitration).
- 4. Once individual grievances have been consolidated into a national grievance, no further actions will be taken on the individual grievances and the outcome of the national grievance will be determinative of the final outcome in the individual grievances.

- C. NTEU will be entitled to bring no more than two (2) Counsel employees to any meeting with the Office under the consolidated national grievance procedure. The two Counsel employees so designated by NTEU will receive travel and per diem and will be on official time for travel to and attendance at the grievance meeting(s).

### **Section 6 - Arbitration**

- A. Invocation of arbitration will be by certified mail, return receipt requested, fax, e-mail or by hand delivery within thirty (30) days of receipt by the moving party of the final response. Receipt of notice of appeal by fax may be established by proof of fax. Receipt of notice of appeal by e-mail may be established by proof of delivery.

- B. Arbitration of grievances filed under this procedure will be conducted in accordance with the applicable provisions of Article 35 (Arbitration). Provisions of the above-mentioned Article that conflict with this procedure are not considered applicable provisions for purposes of this procedure.

## **ARTICLE 35 – ARBITRATION**

### **Section 1**

- A. Matters not settled in the grievance procedure or that are otherwise appealable to arbitration will be arbitrated pursuant to the terms of this Article.
- B. There are two (2) arbitration procedures available under this Agreement. These are as follows:
  1. Conventional arbitration, used when a matter is not identified as one which is to be arbitrated by means of streamlined procedures; and
  2. Streamlined arbitration.

### **Section 2**

Before proceeding to an arbitration hearing, the Office and NTEU may, by mutual agreement, engage in attempts to mediate the dispute. Any costs incurred in this process will be equally shared by both parties.

### **Section 3 - Selection of Arbitrators**

- A. The arbitration procedures under this contract will provide for two (2) panels of arbitrators: one panel for cases arising east of the Mississippi River and one panel for cases arising west of the Mississippi River. Each panel will consist of five (5) arbitrators. Arbitrators' names will be placed alphabetically on each list and the arbitrators will hear grievances on a

rotating basis. Some of the arbitrators on each panel must possess adequate experience or knowledge of the Equal Employment Opportunity (EEO) laws to hear grievable matters which allege discrimination based on race, religion, color, sex, national origin, age, or physical or mental disability and shall be designated to hear grievances where one of these forms of discrimination has been alleged.

- B. As arbitrators are stricken from the panels or otherwise no longer accept Office cases, new arbitrators will be designated under the process set forth in Section D.
- C. Each party may strike up to one (1) arbitrator from each panel during each twelve (12) month period of this Agreement by giving notice to the other party and the arbitrator. Upon receipt of that notice, no further cases will be assigned to that arbitrator, except that the arbitrator will hear and decide any cases already assigned.
- D. In replacing arbitrators or otherwise filling vacancies, the parties will request three (3) names from the Federal Mediation and Conciliation Service (FMCS) for each vacancy. Each party may add two (2) names to the list for each vacancy. The parties will then alternately strike names from each list until the requisite number of names remains to fill the vacancies. First strike will be determined by a flip of the coin.
- E. Cases will be assigned to arbitrators on each panel by invocation date. Case assignments will be made by telephone contact between the NTEU's field representative and the Office's designated representative. Hearing dates will then be scheduled by telephone contact between the NTEU's field representative and the Office's appropriate General Legal Services office.

#### **Section 4 - Invoking Arbitration**

- A. Arbitration will be invoked within thirty (30) calendar days after:
1. The date that NTEU receives the last step decision for all grievances; or
  2. The effective date of any adverse action.

Arbitration will be invoked for any other action in accordance with the time deadlines specified elsewhere in this Agreement.

- B. When invoking arbitration, NTEU will serve invocations on the Office's Director of Labor and Employee Relations. Invocations of arbitration must be timely sent by certified mail, fax, e-mail, or by hand-delivery. Notice by certified mail, fax, or e-mail will be effective as of the date the notice is mailed or transmitted and notice of appeal by hand-delivery will be effective when received. Receipt of notice of appeal by fax may be established by proof of fax. Receipt of notice of appeal by e-mail may be established by proof of delivery.
- C. Pending grievances involving the same action must be assigned to the same arbitrator. For example, all grievances involving the issue of misranking on a "best qualified" list will be assigned to the same arbitrator.

#### **Section 5 - General Procedures**

- A. The following procedures apply to all arbitrations:
1. The parties will each pay one half of the regular fees and expenses, including travel expenses, of the arbitrator hearing a case.
  2. Arbitration hearings will be held on the Office's premises at the

appellant's or grievant's post of duty (POD) when practicable or at any site agreed to by the parties.

3. The grievant, the grievant's representative, and all bargaining unit employees who are called as witnesses will be excused from duty to the extent necessary to participate in the arbitration proceedings without loss of pay or charge to annual leave. For mass grievances, the arbitrator shall have the discretion to determine how many grievants will be excused to the extent necessary to participate in the arbitration proceedings without loss of pay or charge to annual leave.
4. The arbitrator will determine which of the witnesses called by a party may testify at the hearing, based upon a determination that such testimony is not irrelevant or unduly repetitious. By agreement, bargaining history testimony may be provided to the arbitrator over the telephone.
5. Except in emergency situations, the arbitrator will not have the authority to keep the record open in order to hear testimony of additional witnesses. Each party has the responsibility and obligation to produce its witnesses on the day of the hearing. For the purposes of this Article, "emergency" has the same definition it has in 5 USC § 7106.
6. The arbitrator shall have the authority to make all arbitrability and/or grievability determinations. The arbitrator shall and will make grievability and/or arbitrability determinations prior to addressing the merits of the original grievance. The parties may also mutually agree that the arbitrator will hear grievability and arbitrability issues and make a decision on such issues

- prior to hearing the merits of the original grievance.
7. If the Office declares a grievance non-arbitrable or non-grievable, the original grievance shall be considered amended to include the issue of non-grievability. Such declaration may be made at any time.
  8. The arbitrator's decision shall be final, binding and except for streamlined awards, precedential, and the arbitrator shall possess the authority to make an aggrieved employee whole to the extent such remedy is not limited by law, including the authority to award back pay and interest in accordance with 5 CFR § 550.801 *et seq.*, reinstatement, retroactive promotion where appropriate, and to issue an order to expunge the record of all references to a disciplinary, adverse, or unacceptable performance action, if appropriate. Nothing in this provision shall prohibit any party's statutory ability to file exceptions to or an appeal from an arbitration award.
  9. Consistent with Article 2 (Precedence of Law and Regulation) of this Agreement, arbitrators must follow laws, binding Government-wide regulations, and applicable precedents.
  10. The arbitrator will set the date of the hearing with the concurrence of the representatives of the parties. Once that date has been established, a party unilaterally requesting that an arbitration hearing be postponed, delayed, and/or canceled for any reason (which results in any fees being charged by the arbitrator and/or court reporter) shall pay any and all fees.
  11. In any grievance where the parties mutually agree to postpone, delay, and/or cancel an arbitration proceeding, the parties will equally share the cost of any fees being charged by the arbitrator and/or court reporter. The fact that one party has no objection to the request of the other party for postponement, delay, or cancellation of the arbitration hearing will not absolve the requesting party from the obligation to pay all the fees being charged.
  12. In any grievance where the parties settle the matter prior to an arbitration hearing and there are fees being charged due to the cancellation of the hearing, both parties will equally share the cost of any fees being charged.
  13. The strict rules of evidence are not applicable, and all hearings shall be informal.
  14. The parties have the right to present and cross examine witnesses, and issue opening and closing statements.
  15. The arbitrator may exclude testimony or evidence which is determined to be irrelevant or unduly repetitious.
  16. Testimony shall be under oath or affirmation.
  17. The arbitrator will have no authority to add to, subtract from, alter, amend, or modify any provision of this Agreement, or impose on either the Office or NTEU any limitation or obligation not specifically provided for under the terms of this Agreement. The parties reserve the right to take exceptions to any award to the Federal Labor Relations Authority. Awards may not include the assessment of expenses against

either party other than as specified to in this Agreement.

18. The arbitrator shall have the obligation of assuring that all necessary facts and considerations are brought before him or her by the representatives of the parties. This may include drawing an appropriate inference when either party fails to present facts or witnesses that the arbitrator deems necessary and relevant. However, nothing in this Article entitles either party to discovery.
19. The Office will make bargaining unit employees available as witnesses when requested by NTEU. If the Office determines it is not administratively practicable to comply with NTEU's request, and the arbitrator determines the employee's testimony is relevant, then the hearing may be postponed. However, NTEU may agree to submit an affidavit in place of the direct testimony of the employee.
20. The arbitrator shall hold the hearing notwithstanding that one party refuses to attend the arbitration. The first issue to be addressed shall be the question of whether the case is properly before the arbitrator. If the case is proper, the grievance will be heard on the merits. Copies of any transcripts, briefs, and decisions will be served on the other party. The party going forward will notify the other party of its intent, listing the date and location of the hearing.
21. Any written decision by the arbitrator will be provided to the parties as well as to the Office of Chief Counsel and the NTEU Director of Field Operations. The parties may also mutually request that the arbitrator provide disk copies of the decisions

in a designated word processing format.

22. In any case where an arbitrator modifies an award pursuant to a request for reconsideration made by the Office of Personnel Management (OPM), the parties will share equally the additional fees of such reconsideration. In cases where OPM does not finally prevail, the Office will assume full responsibility for the additional fees of the arbitrator.
23. In cases where an arbitration decision has been modified or rejected by a reviewing body solely because the remedy was ruled illegal, the case will be remanded to the arbitrator by the parties to fashion a new remedy if appropriate.

## **Section 6 - Conventional Arbitration**

In addition to the general procedures outlined above in Section 5, the following procedures will apply in all conventional arbitration matters, except for those matters subject to "streamlined" arbitration.

- A. Within six (6) months from the date it invokes arbitration, NTEU must contact the Office's representative to schedule the arbitration hearing. If NTEU does not contact the Office's representative within the applicable six-month period to schedule the arbitration, the grievance will be considered withdrawn.
- B. Bargaining history may not be used in a conventional arbitration hearing unless the party proposing to use it has notified the other in writing at least thirty (30) calendar days prior to the hearing of its intent to use it. If a party gives notice of intent to use bargaining history, the other party may use it without providing notice. The parties should attempt to stipulate to the bargaining history of each side and to take testimony via the

telephone; however, neither must be done.

- C. A verbatim transcript will be kept in all conventional arbitration hearings. The transcript will be made by an authorized court reporter. The arbitrator and each of the parties will be provided with a copy. The costs of the transcript will be equally shared by the parties.
- D. In all cases, post-hearing briefs may be submitted.
- E. If after sixty (60) calendar days of invocation the parties are unable to agree to a hearing date, either party may contact the arbitrator who will select the hearing date. That date will be no sooner than forty-five (45) calendar days and not later than seventy-five (75) calendar days from the date the arbitrator is contacted.
- F. Pre-hearing Disclosure:
  - 1. The parties agree to exchange a complete list of witnesses (both bargaining unit and non-bargaining unit) at least fifteen (15) days prior to the hearing.  
The parties shall attempt to mutually agree on witnesses to testify at the hearing. To the extent the parties cannot agree on appropriate witnesses, the parties may either submit a list of disputed witnesses to the arbitrator at the hearing for a determination, or request in writing prior to the hearing that the arbitrator make a determination on those witnesses.
  - 2. If, due to exigent circumstances, either party cannot meet the time frames described above, the time frame may be extended by mutual agreement. If agreement is not reached on an extension of time, the requesting party may file a written request with the arbitrator requesting

additional time within which to submit a witness list. Any such request must be filed no later than the date on which the witness list would otherwise be due.

## **Section 7 - "Streamlined" Arbitration**

- A. In addition to the general procedures outlined in Section 4, the following procedures shall apply to all streamlined arbitration matters.
- B. The streamlined arbitration procedures will apply to all of the following types of cases:
  - 1. Written reprimands;
  - 2. Admonishments;
  - 3. Denials of annual or sick leave or leave without pay;
  - 4. Dues withholding;
  - 5. Bulletin board postings;
  - 6. Literature distribution;
  - 7. Denials of administrative leave;
  - 8. AWS disputes;
  - 9. Suspensions of three (3) days or less;
  - 10. Denials of any official time or bank time NTEU representatives are entitled to under this Agreement;
  - 11. Ranking panel/officials evaluations;
  - 12. Denials of outside employment requests other than legal employment; and
  - 13. Any other matters upon which the parties mutually agree.



Only streamlined arbitration procedures, not conventional arbitration procedures, may be utilized for the above-mentioned matters.

- C. Cases alleging discrimination based on race, color, sex, national origin, religion, age, or physical or mental disability or where bargaining history is involved are not subject to the streamlined arbitration procedure.
- D. Streamlined cases will be heard by the same panels of arbitrators used for conventional arbitration cases.
- E. Within thirty (30) days from the date of invocation, NTEU must contact the Office's designated representative to schedule the arbitration. If NTEU does not contact the Office's designated representative within the designated thirty-day period to schedule the arbitration, the grievance will be considered withdrawn. If Counsel has not notified NTEU of its designated representative and provided contact information for that person, then NTEU may contact the Director, Labor and Employee Relations.
- F. Hearings on all streamlined cases will be held within sixty (60) days after the date of invocation. If the arbitrator who would normally be assigned to the case is unable to hear the case within the sixty (60) day period, then the case assignment will go to the next arbitrator on the list in order until an arbitrator is identified who is available to hear the case within the sixty (60) day period. If no arbitrator is available within the sixty (60) day period, the case will be assigned to the arbitrator with the first available date.
- G. Arbitrators are encouraged to try to mediate a settlement in all streamlined cases.

H. There will be no transcripts in any streamlined arbitration cases.

I. Neither party may file a written post-hearing brief. However, either party has the right to make an oral closing argument or to submit copies of relevant legal authorities and court decisions (including copies of Office/NTEU arbitration decisions), up to the close of the hearing.

J. Pre-hearing Disclosure:

- 1. The parties agree to exchange a complete list of witnesses (both bargaining unit and non-bargaining unit) at least five (5) business days prior to the hearing. The parties shall attempt to mutually agree on witnesses to testify at the hearing. To the extent the parties cannot agree on appropriate witnesses, the parties may either submit a list of disputed witnesses to the arbitrator at the hearing for a determination, or request in writing prior to the hearing that the arbitrator make a determination on those witnesses.
- 2. If, due to exigent circumstances, either party cannot meet the time frames described above, the time frame may be extended by mutual agreement. If agreement is not reached on an extension of time, the requesting party may file a written request with the arbitrator requesting additional time within which to submit a witness list. Any such request must be filed no later than the date on which the witness list would otherwise be due.

K. Arbitrator's Decision:

- 1. Arbitrators hearing streamlined cases will be asked by both parties to give a bench decision at the conclusion of the hearing. The arbitrator will determine whether a

bench decision is appropriate and render his/her decision accordingly.

2. All decisions on streamlined cases, including bench decisions, must be in writing and must be issued within ten (10) days after the close of the hearing. Any written decision shall be no more than ten (10) pages in length.
3. Streamlined arbitration decisions are non-precedential.

## **ARTICLE 36 - ATTORNEY FEES**

### **Section 1**

- A. Reasonable attorney fees will be provided to employees (NTEU) who suffer unwarranted and unjust personnel actions if the employee (NTEU) is the prevailing party and the arbitrator determines the payment of attorney fees is warranted in the interest of justice, including any case in which a prohibited personnel practice was engaged in by the Office or any case in which the Office's action was clearly without merit, and attorney fees are otherwise consistent with applicable law.
- B. Attorney's fees in an action based on sexual orientation discrimination are permitted only if the employee suffers a diminution of pay, as defined by the Back Pay Act, because of the sexual orientation discrimination.

### **Section 2**

Upon the issuance of an award, the arbitrator will retain jurisdiction to determine the entitlement to attorney fees, if any. Within twenty (20) days of receipt of an arbitrator's award, NTEU may submit a request for attorney fees. Such a request will be accompanied by documentation, legal argument and citation sufficient to enable the arbitrator to decide. The request will be simultaneously served on the Office. Within

twenty (20) days of receipt of NTEU's request, the Office will submit its response. Such response will be accompanied by sufficient documentation, legal argument and citation. The Office's response will be simultaneously served on NTEU. The arbitrator will decide whether to accept further rebuttal briefs.

### **Section 3**

The arbitrator's award on the issue of attorney fees will be issued within thirty (30) days of the arbitrator's receipt of the Office's response. An award of attorney fees will contain a detailed explanation of why fees were granted as well as the hours and rates allowed.

### **Section 4**

Except as otherwise provided in the Agreement, all charges of the arbitrator incurred in connection with a request for an award of attorney fees will be shared equally by the parties.

## **ARTICLE 37 - NTEU RIGHTS**

### **Section 1**

NTEU has the right and obligation to represent all employees in the unit; and has the right to present its views, either orally or in writing, to the Office.

### **Section 2**

- A. The designated NTEU representative will be given reasonable prior notice of, and the opportunity to be represented at, formal discussions between the Office and employees concerning grievances, personnel policies and practices or other general conditions of employment in the unit, within the meaning of 5 USC § 7114(a)(1).
- B. For purposes of this Agreement, formal discussions include any formal discussion between one or more

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representatives of the Office and one or more bargaining unit employees or their representatives concerning any grievances, personnel policies and practices or other general conditions of employment, including the regular orientation sessions for new employees conducted by Finance and Management.

- C. NTEU will be given reasonable advance notice, but not less than forty-eight (48) hours, if practicable, of any formal discussions. Prior to the meeting, the Office will also inform NTEU of the general topic of the meeting, when known (e.g., to discuss leave rules).

- D. Formal meetings do not include formal training sessions for unit employees.

### Section 3 - Orientation

#### A. National Office

1. NTEU will normally be provided a twenty (20) minute period for all National Office employee orientation sessions to exercise the rights described in this Section. Where possible, this time will normally be provided immediately preceding a break. No Office representatives will be present during the period of time that the NTEU representative(s) meet with the employees. NTEU may distribute copies of the Agreement, provided by the Office, during this session. If not, copies will be distributed by the Office.
2. On the day of the orientation, the Office will contact the NTEU representative by no later than 9:00 a.m. (or other time mutually agreed upon) in order to provide a mutually convenient time for the NTEU presentation.
3. The designated NTEU representative will be provided with the names, positions, titles and

grades of all bargaining unit employees who will be at an orientation session at least two days in advance, whenever possible.

#### B. Field

1. Upon request, the Office will arrange for a local NTEU representative to speak privately, with no management representative present, with any new bargaining unit employees for twenty (20) minutes to exercise the general rights explained above.
2. NTEU's request for such a meeting should be made to the local F&M management official in the POD where the employee is located and must be made within one month after the employee reports to duty. No travel expenses will be paid related to any such meetings.

### Section 4

The Office will normally inform NTEU within fifteen (15) days of receipt whether information requested under 5 USC § 7114(b)(4) will be supplied. Where the Office has determined to supply such information, time limits under Articles 33 (Employee Grievance Procedure) or Article 34 (Institutional Grievance Procedure and National and Consolidated Grievance Procedures), or for filing grievances or taking grievances to later steps will be suspended until the information is delivered. If the information request appeal is not concluded within six (6) months of the date of the Office's refusal to release the information, the Office, at its option, may reinstitute the time limits for the processing of the grievance.

### Section 5

- A. Upon request, the Office will meet with up to four (4) NTEU representatives at least annually to brief such representatives regarding the Office's

annual business plan, strategic plan, staffing plan, and the Office's budget for the fiscal year. Counsel stewards who attend any such briefings will be allowed official time for the meetings, but no travel expenses will be paid for any such briefings.

- B. On an annual basis, Office-wide objectives will be provided in writing to National NTEU for observations and input. Similarly, when the Office develops its annual financial plan, the plan will be distributed to NTEU for observations and input.

## **Section 6**

- A. One week of each year (the same as that agreed upon between NTEU and IRS nationally) will be recognized by the Office as Labor Recognition Week. During that week, at the National Office and at each POD, NTEU may use Counsel-controlled lunch rooms, cafeterias, break rooms, lobbies, hallways, or other Counsel-controlled non-work areas to set up exhibits. NTEU may also use Counsel-controlled space to hold meetings or activities related to Labor Recognition Week during lunch, or before or after hours.
- B. One (1) hour of administrative leave will be granted to employees only to participate in activities scheduled during Labor Recognition Week, absent the need for the specific skill and knowledge of a particular employee. In addition, stewards may use bank time to participate in Labor Recognition Week activities.

## **ARTICLE 38 - OFFICE RIGHTS**

### **Section 1**

The Office retains the right:

- A. To determine the mission, budget, organization, number of employees, and internal security practices of the agency;
- B. To hire, assign, direct, layoff and retain employees, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against employees;
- C. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which operations will be conducted;
- D. With respect to filling positions, to make selections for appointments from:
  - 1. Among properly ranked and certified candidates for promotions; or
  - 2. Any other appropriate source;
- E. To take whatever actions may be necessary to carry out the mission during emergencies;
- F. To determine the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty; and
- G. To determine the technology, methods, and means of performing work.

## **Section 2**

The Office retains all other rights in accordance with applicable laws and regulations, except for those specific modifications contained in this Agreement.

## **ARTICLE 39 - NTEU REPRESENTATIVES AND OFFICIAL TIME**

### **Section 1 – Designation**

- A. Unless otherwise expressly stated, wherever in this Article the term NTEU representative is used, it will include NTEU stewards who are Counsel

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employees, and any other individuals authorized by NTEU in advance to act on its behalf including IRS employees.

- B. 1. NTEU has the responsibility to designate its representatives or stewards and provide updated information on those individuals to the Office. Once National NTEU (or its designee) identifies an individual as a NTEU representative or steward, the Office will recognize the individual as such a representative or steward and will provide any benefits that accrue to such a representative or stewards (including any official time or bank time).
- 2. Within 60 days after the effective date of this Agreement, National NTEU will verify to the Director, Labor & Employee Relations that the Sharepoint site contains a full updated list of the names, telephone numbers, and office locations of the NTEU stewards. NTEU will be responsible for updating the list of Counsel stewards and other NTEU representatives. This will be done by the Counsel NTEU representatives who have the ability to add documents or change existing documents on the Sharepoint site.
- C. 1. NTEU will be entitled to appoint seventeen (17) stewards at the National Office. No more than five (5) stewards may be designated from any Associate Office (or equivalent), and no more than two (2) stewards may be designated from any one work unit (e.g., branch). Individuals duly designated under this Article will not be displaced due to a consolidation of their work units.
- 2. NTEU may also appoint two (2) stewards per field post of duty with an additional steward permitted for

offices with fifty (50) or more bargaining unit employees.

- 3. In addition, NTEU will designate up to two (2) National Stewards. The National Stewards will have the following rights and responsibilities:
  - (a) The National Stewards shall be able to represent both in field posts of duty (PODs) or in Chapter 251 as determined by Chapter 251's President.
  - (b) The National Stewards will work with Chapter Presidents and other elected officers or appointed NTEU Chief Stewards or stewards but will not replace those individuals.
  - (c) The National Stewards shall be the steward for any POD where NTEU has not appointed a specific steward. For those PODs, the Office will provide notices of formal meetings to the National Steward(s) only. NTEU will provide information to the Office via the Sharepoint site mentioned in Article 39, Section 1(B)(2) about which PODs are represented by which National Stewards and will identify the back-up to each National Steward for the purpose of providing notices for each such POD.
  - (d) The National Stewards will be able to use official time and bank time as provided for elsewhere in this Article.
  - (e) The Office will pay up to \$10,000 in travel expenses per fiscal year for the National Stewards. This money may be used only when a National Steward is traveling to or from a POD identified in Section 1(C)(3)(c) above to serve as a



representative in an oral reply or final step grievance meeting.

- (f) National Stewards and their managers are expected to have regular discussions regarding workload.

- D. The list of NTEU designated representatives may also be posted on NTEU bulletin boards and the NTEU web page on the Counsel intranet.

## **Section 2 - Official Time**

- A. The Office fully recognizes that whatever reasonable time is spent in the conduct of NTEU/Office business is spent as much in the interest of the Office as that of the employees.
- B. NTEU representatives will be provided official time, as determined by the Federal Labor Relations Authority (Authority), for participation for, or on behalf of, NTEU in any phase of proceedings before the Authority during the time the NTEU representative would otherwise be in a duty status.
- C. NTEU representatives will be granted official time for participation for, or on behalf of, NTEU in the meetings with the Office (including time to travel to and from such meetings) described in Section 3, below, to the extent authorized by the Federal Service Labor-Management Relations Statute. Except where otherwise specifically provided, for each of these meetings one (1) steward will be entitled to be on official time. Additional stewards may be present at such meetings on bank time.
- D. NTEU representatives will be reimbursed for local travel expenses (if any) incurred in order to attend any examination by a representative of the Office, or TIGTA in connection with an

investigation that may lead to disciplinary action.

- E. Notwithstanding any other provision in this Agreement, the parties agree that any activities performed by NTEU representatives relating to the internal business of NTEU (including the solicitation of membership, election of officials, and collection of dues) will be performed during the time NTEU representatives are in non-duty status.
- F. NTEU will be granted sixteen (16) hours of official time per steward to train stewards on the new Agreement, plus reasonable time for travel, within twelve (12) months of the effective date of this Agreement. This time will not be charged against the bank time provided in this Article.
- G. The Office will reimburse NTEU representatives for local travel expenses incurred in connection with official time activities referred to in Section 3 of this Article. No other travel or per diem will be paid for Union activities unless specifically authorized by another portion of this Agreement or as otherwise approved by the Office.

## **Section 3 - Definition of Official Time Activities**

Official time may be used for any of the following purposes:

- A. Meetings with the Office concerning personnel policies, practices or other general conditions of employment, or any other matter covered by 5 USC § 7114(a)(2)(A);
- B. Meetings to discuss or present unfair labor practice charges or unit clarification petitions;
- C. Oral replies to notices of proposed disciplinary, adverse or unacceptable performance actions;



- D. Meetings to present appeals in connection with statutory or regulatory appeal procedures in which NTEU is designated as the representative, to the extent authorized by the Federal Service Labor-Management Relations Statute;
- E. Meetings for the purpose of presenting reconsideration replies in connection with the denial of within-grade increases;
- F. Examinations of employees in the unit by a representative of the Office in connection with an investigation if:
  - 1. The employee reasonably believes that the examination may result in disciplinary action against the employee; and
  - 2. The employee requests representation.
- G. Tax audits of unit employees that are conditions of employment when the employees request representation;
- H. Grievance meetings and arbitration hearings;
- I. Meetings of committees on which NTEU representatives are authorized membership pursuant to this Agreement;
- J. Participation in negotiations (including mid-term);
- K. Participation in joint training with Office officials or where training is ordered by a third party;
- L. Participation in other third party proceedings, to the extent authorized by governing law, regulation, and/or this Agreement; and
- M. Meetings for the purpose of presenting replies, if any, to proposed termination of probationary employees for pre-

appointment reasons.

#### **Section 4 - Definition of Bank Time**

For other activities associated with the maintenance of an effective labor-management relationship to the extent authorized by the Federal Service Labor-Management Relations Statute, NTEU representatives will be provided bank time in amounts determined in accordance with the provisions of Section 5 below. Bank time may be used for any of the following purposes:

- A. To confer with employees with respect to any matters for which remedial relief may be sought pursuant to the terms of this Agreement;
- B. To prepare grievances;
- C. To prepare witnesses;
- D. To review documents that are not available during non-duty hours;
- E. To prepare a reply to a notice of proposed disciplinary, adverse or unacceptable performance action;
- F. To prepare for arbitration;
- G. To prepare a reconsideration statement in connection with the denial of a within-grade increase;
- H. To meet with national staff representatives of NTEU in connection with a grievance, arbitration or unfair labor practice charge;
- I. To prepare an unfair labor practice charge or hearing preparation in any FLRA case as a representative of NTEU;
- J. To travel to and from meetings for which the NTEU representative receives bank time;
- K. To prepare for negotiations;

- L. To prepare minutes of meetings concerning elements and standards described in Article 21 (Performance Appraisals);
- M. To prepare for LMRC meetings or other meetings involving joint committees composed of NTEU and Office representatives (i.e., DEEO Committees);
- N. To participate in training designed primarily to further the interest of the Government by bettering the labor-management relationship. This training includes, but is not limited to: (1) that portion of any NTEU National training, or NTEU convention, or the NTEU Legislative Conference where the agenda shows time spent in training on labor-management matters vs. internal union business, and (2) a steward's attendance at grievance meetings, investigatory interviews or oral replies as an observer for training purposes;
- O. To prepare and maintain records and reports required of NTEU by Federal agencies, including the IRS; and
- P. To meet and confer with legislative branch officials in connection with employment matters.

As part of the approval process for bank time for any NTEU National Training, NTEU Convention or the NTEU Legislative Conference, National NTEU will provide a list of Chief Counsel employees who registered for any such training to the Office so the Office can properly monitor the bank time used at any such training. The providing of the list of attendees will not delay the approval of bank time.

### **Section 5 - Approval of Union Time & Accounting for Union Time**

- A. Stewards and employees wishing to use time under this Article will request approval for the use of official and bank

time and will be released provided their work requirements or work schedules do not prohibit release. Stewards and affected employees will inform their supervisors as to where they will be, the approximate time they will be away from their work areas, and the activity for which they are entitled to time.

- B. 1. NTEU representatives will provide an after-the-fact accounting of their use of union time (both bank time and official time) on a monthly or weekly basis.
- 2. Union time will also be reported in the categories requested by OPM or other government-wide authority. Currently, the OPM categories for time reporting are:
  - (a) Term bargaining,
  - (b) Mid-term bargaining,
  - (c) Dispute resolution, and
  - (d) General labor-management relations matters (including, but not limited to, LMRC meetings and NTEU-sponsored training).
- 3. Union time will be reported in CASE for all NTEU representatives. The Office will provide specific information on how union time should be reported in CASE by category to National NTEU (as well as provide updated information if the requested time reporting categories change). In return, National NTEU will ensure that NTEU Counsel stewards accurately report all union time. NTEU stewards who do not currently report their time in CASE will be given access to and training on CASE prior to being required to use it to report their union time.

## ARTICLE 39

Bank time referred to in Section 4 above, will be made available as follows:

1. Upon the effective date of this Agreement, NTEU will be credited with 10,000 hours of bank time. At the end of the first contract year and every subsequent year, NTEU will be credited with 5,000 hours of bank time. Any unused time from the prior year will be carried over to the next contract year so long as this unused time does not exceed 5,000 hours. If the unused time exceeds 5,000 hours, then only 5,000 hours will be carried over to the next contract year. This bank of time will be used by both the Field and National Office NTEU representatives.
2. The Office will provide National NTEU with quarterly reports of bank time and official time used pursuant to the terms of this Article. These reports will be furnished to National NTEU within thirty (30) days of the end of the quarter.
3. If NTEU's total available bank time falls below 1,500 hours, NTEU may enter into negotiations with the Office for more bank time. Such negotiations shall occur between the national parties. If no agreement is reached within fifteen (15) calendar days after notice is served on the Office by the Union of the Union's desire to negotiate, the Union can invoke arbitration by serving a second letter on the Office. Either or both parties will then contact the next arbitrator from the "east of Mississippi" arbitrator list referred to in Article 35. That arbitrator will then be retained to resolve these disputes. The arbitrator will assist the parties to reach agreement through appropriate means including the issuance of an award. Where the arbitrator cannot help the parties reach a voluntary agreement, the

parties will be entitled to a decision as to what is a reasonable solution and the arbitrator will decide the question of "what is reasonable" under the circumstances presented. The award will be issued in writing, and will be considered a final and binding arbitration decision under 5 USC § 7122.

- D. If an NTEU steward is notified about a meeting that would involve official time (for example, formal meetings or investigatory interviews), the steward will normally be released from work to attend, subject to workload requirements. The steward may request that management reschedule the meeting if the steward is unavailable for the meeting. The Office will make reasonable good faith efforts to reschedule such a meeting if the extension of time does not unduly delay the meeting.

### Section 6 - Workload Conflicts

The parties recognize that the performance of representational duties by NTEU representatives means less time to perform regular work assignments. NTEU representatives and their supervisors are accordingly encouraged to discuss regularly the NTEU representatives' workload to minimize the potential conflicts between regular work assignments and representational duties and to ensure fair performance appraisals and accomplishment of the work unit's production requirements. If the parties are unable to resolve a conflict that may arise, the NTEU representative may request the supervisor's reasons, in writing, for refusing to reassign the work.

### Section 7 - Employees' Use of Official Time

- A. A grievant, appellant, or an employee who is the subject of an examination in connection with an investigation will receive official time and reimbursement

and/or per diem for travel to and from attendance at the following:

1. Grievance meetings;
2. Arbitration hearings;
3. Oral reply meetings for notice of proposed adverse, disciplinary or unacceptable performance action;
4. An adverse action hearing, if the employee is still on the rolls;
5. Other statutory or regulatory appeal hearings, if the employee is still on the rolls;
6. Meetings for the purpose of presenting reconsideration replies in connection with the denial of a within-grade increase;
7. An examination by a representative of the Office (including the Office of Inspector General and TIGTA), in connection with an investigation that may lead to disciplinary action; and
8. To present oral replies in connection with the termination of a probationer if such employee is still on the rolls.

B. Witnesses who are approved to appear at any of the aforementioned activities or directed to do so by an appropriate authority (e.g., an arbitrator) will also receive official time for attendance at, and travel to, and from, such meetings.

C. Subject to workload requirements, employees will receive a reasonable amount of official time when being interviewed during regular duty hours by:

1. A NTEU representative who is using time pursuant to this Article; and/or
2. A national representative of NTEU, in connection with a matter for which

remedial relief sought pursuant to this Agreement.

The Office will not unreasonably deny an employee's request for official time for these purposes.

- D. Employees will receive a reasonable amount of official time to prepare responses to actions proposed by the Office, when NTEU is the designated representative of the employees.

### **Section 8 – Representation of Government Employees Outside Chief Counsel Bargaining Unit**

A. [This Section is reserved because NTEU intends to challenge Section 3(C) of Treasury General Counsel Directive No. 6 concerning Office attorneys and representation outside the Counsel bargaining unit. In the interim, unless a third party rules otherwise, the Office will enforce Section 3(C) which prohibits any Counsel attorney (including an NTEU steward or Officer) from representing any employee outside their bargaining unit (even on their own time). NTEU's agreement with this reservation language does not waive any of NTEU's rights to grieve or otherwise challenge the application of Section 3(C) of Treasury General Counsel Directive No. 6. The Office's agreement with this reservation language does not waive any of the Office's rights to assert any applicable defenses.]

B. Counsel employees who are not attorneys may represent employees outside the Counsel bargaining unit unless such representation would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee. No official time or bank time can be given by Counsel for representation outside the bargaining unit.

## ARTICLE 40

1. Generally, all such representation must be done on non-duty time (e.g., during lunch, while on approved annual leave or other earned leave such as credit hours). The test for whether the employee may be released for such representation on non-duty time is the same as the test for granting annual leave found in Article 9.
  2. The only time paid duty time may be used for representation outside the Counsel bargaining unit is when the use of paid duty time is mandated by an authority outside this Agreement (such as the EEOC regulations at 29 CFR § 1614.605).
  3. Because this representation outside the bargaining unit is not bank time or official time under the other provisions of Article 39, any such time should not be reported as union time.
- C. The Office recognizes that NTEU has the right to designate which individual(s) will represent other employees and/or NTEU in labor-management matters. However, both parties understand that the Office cannot grant official time or bank time to any NTEU representative who is not also a Counsel employee.

### **ARTICLE 40 - NTEU ACCESS TO OFFICE FACILITIES AND SERVICES**

#### **Section 1**

- A. Upon reasonable advance request by NTEU, the Office will provide meeting space, as available, for meetings held for any purpose during non-duty hours. Non-duty hours are hours before or after a workday, lunch periods, weekends, or holidays. NTEU will comply with all security and housekeeping rules in

effect in the Office's work area at that time and place.

- B. Upon reasonable advance request by NTEU, the Office will provide space for the placement of ballot boxes being used in conjunction with chapter officer elections governed by local chapter by-laws. NTEU acknowledges that no responsibility for the safety or security of the ballot boxes is assumed by the Office.

#### **Section 2**

- A. Upon reasonable advance request by NTEU to the Office's designee having jurisdiction over the requested meeting space, the Office will provide NTEU meeting space, when available, for the following purposes:
1. Preparing or discussing a grievance;
  2. Preparing for meetings with the Office;
  3. Conducting informal discussions to carry out the goals and objectives of the Federal Service Labor-Management Relations Statute;
  4. Interviews of unit employees by a national representative of NTEU in connection with a matter for which relief may be sought pursuant to this Agreement; or
  5. Chapter meetings and lunch-and-learns so long as such meetings occur during an attending employee's non-duty time.
- B. NTEU may use the Office's video and, where applicable, teleconferencing equipment for presentations in orientation sessions described in Article 37 (Union Rights) and for Union-sponsored local training and meetings with employees if available and where there is no additional cost to the Office.



Local training and meetings with employees will be subject to the applicable provisions of Article 39 of this Agreement.

### Section 3

- A. Unless prevented by new or existing building leases or changes to the Office facilities, each post of duty (POD) or building (other than 1111 Constitution Avenue) will have at least one (1) official bulletin board and NTEU will be provided 1/3 of each official bulletin board for its exclusive use subject to the provisions of Section 3(C). The status quo at 1111 Constitution Avenue regarding bulletin boards shall be maintained. When acquiring new space, the Office will make reasonable efforts to ensure that bulletin board space for NTEU use is obtained.
- B. NTEU may distribute material on the Office's premises in both work and non-work areas during scheduled working hours, provided that both the employees distributing such material and the employees receiving the material are not on duty. Non-work areas are defined as follows: the cafeteria or any other commercial enterprise located on the Office's premises (with approval of the lessor or operating agency), space set aside as snack bars or break areas, and rest rooms. NTEU may utilize centrally located employee mail slots or bins for distribution of materials regardless of whether the receiving employees are on duty.
- C. Material that may be distributed in the Office's work areas or posted on official bulletin boards includes data on NTEU services, such as various insurance programs, but does not include material that libels or slanders any individuals, other labor organizations, government agencies, or activities of the Federal Government. In addition, no material that reflects on the integrity or motives of

any individuals, other labor organizations, government agencies, or activities of the Federal Government, may be posted on official bulletin boards or distributed in Office work areas, mail bins or through e-mail. E-mail is also subject to the provisions of Section 4(A).

- D. NTEU may use the Office's internal mail system to distribute labor-management material including announcement cards. If the Union develops an electronic announcement card, the Office will allow NTEU Chapter 251 (or other party designated by National NTEU) to distribute the electronic announcement card via e-mail. In order to distribute the electronic announcement card, the Office shall provide NTEU Chapter 251 (or other party designated by National NTEU) access to an e-mail group that includes NTEU bargaining unit employees.
- E. The Office will establish a website for the exclusive use of National NTEU on the intranet to post materials that could otherwise be posted on traditional bulletin boards. National NTEU will submit materials to the Office's Labor and Employee Relations Division for posting on the NTEU website on the Office intranet. Union items posted on the intranet may also be posted on local bulletin boards.

### Section 4 - Union Use of E-mail

- A. 1. Consistent with law, NTEU representatives are authorized to use the Office's e-mail system to carry out labor-management activities including communications with bargaining unit employees, other stewards, and management.
- 2. NTEU will comply with the provisions of Section 3(C) and this subsection when communicating with bargaining unit employees who are not NTEU representatives. NTEU



representatives will not use the Counsel e-mail system to libel or slander any individual or to cause disruption in the workplace. Failure to comply with this requirement may result in the restriction or revocation of the NTEU representative's privilege to use e-mail for representational purposes. Prior to suspending or revoking access, the Office will provide advance written notice and will attempt to resolve the issue with the appropriate Chapter President, or National NTEU if the issue involves a Chapter President. Such decisions will be subject to the grievance procedures.

- B. Time spent on union e-mails is governed by Article 39 (NTEU Representatives and Official Time) and must be properly reported by Counsel union representatives.
- C. NTEU may use the Office's e-mail system for incidental and de minimis internal union business during the user's non-duty hours.
- D. NTEU may use the Office's e-mail system four times a year to send a NTEU newsletter to all bargaining unit employees.

## **Section 5**

- A. The Office will distribute a printed and bound copy of this Agreement to each current member of the bargaining unit. After this initial distribution, all newly hired bargaining unit employees will be provided with a printed copy of the Agreement.
- B. National NTEU will be provided with a one-time allotment of 250 copies of this Agreement for distribution to NTEU field offices and/or representatives. The Office will also provide NTEU with an electronic copy in both .pdf and WORD and will post a copy on its intranet.

## **Section 6**

The Office will list the name and office telephone number of each representative designated by NTEU in the Office's electronic telephone directories.

## **Section 7**

- A. Upon request and up to four (4) times a year, Counsel will provide NTEU an electronic file in EXCEL format containing the names, grades, position titles, division (or equivalent), branch, POD and e-mail for all bargaining unit employees in the Office. The list will also identify employees on dues withholding status, as well as identify employees new to the Office and any employees who separated from the Office along with the reason for their separation (i.e., retired, resigned, transferred, terminated, etc.). This file will be for NTEU's internal use only.
- B. Once a year, the Office will provide NTEU with a list of all employees in the Office.

## **Section 8 – Access to Regulations**

- A. Upon specific NTEU request to the Director, Labor and Employee Relations, access to portions of the Law Enforcement Manual or Litigation Guidelines Memorandums will be granted if the Office determines [in accordance with the standard set forth in 5 USC § 7114(b)(4)] that such portions are relevant and necessary to investigate and/or process grievances or potential grievances or to prepare for or conduct negotiations. NTEU will comply with all security rules governing such material.
- B. The Office shall furnish, via electronic transmission, revisions of all CCDM Chapters relating to personnel policies, practices and working conditions, excluding those portions which deal with

intra-management communications, labor-management relations, or the Law Enforcement Manual (except as discussed in Section 8(A) above).

### **Section 9 – Access to Office Equipment and Systems**

- A. In connection with matters (including research) relating to this Agreement, NTEU representatives who are Counsel employees will have reasonable access to government equipment, including, but not limited to, telephones, fax machines, and government computers (including intranet, internet, WESTLAW and LEXIS to the extent that those systems are broadly available to all Counsel employees).
- B. However, if government equipment is used for internal union business, the use must be incidental and de minimis and the user must be on non-duty status.
- C. If an employee is exercising a right under this contract (such as filing a grievance or otherwise communicating with NTEU), the same rules outlined in Sections 9(A) and 9(B) regarding access to government equipment apply.
- D. Counsel NTEU representatives will not be restricted by the Office from using the IRS NTEU Chapter offices, facilities, equipment and systems. This means that the Office will allow Counsel NTEU representatives and bargaining unit employees to travel to an IRS NTEU Chapter office located in the same commuting area and use union time (either bank or official time as outlined in Article 39 and under the procedures set forth in Article 39) for both the time spent at the Chapter office and travel to and from the Chapter office.

### **Section 10 – Union Office Space and Equipment**

- A. NTEU Chapter 251 will be provided with enclosed, lockable office space at 1111 Constitution Avenue that is at a minimum between two hundred (200) and two hundred fifty (250) square feet. The space will be furnished at a minimum with: two (2) desks and chairs, three (3) telephones including a telephone specifically designed for conference calls, a conference table with chairs and three (3) 4-5 drawer lockable file cabinets for its exclusive use for NTEU-related business, and a paper shredder.
- B. The Office will also provide NTEU Chapter 251 with a docking station for a laptop computer and a flat screen monitor, one (1) personal desktop computer, the same programs that are installed on the Office systems (i.e., MSOffice, Adobe Acrobat, etc.), and a multifunction printer/scanner/fax. The Office will ensure that both computers are equipped for and provided with internet access, including any necessary software. It will also be connected with the Office's e-mail systems. NTEU Chapter 251 will be responsible for maintaining contact with the appropriate computer support personnel so that these systems can be updated in accordance with regular computer upgrade and patch schedules. The Office will also provide NTEU Chapter 251 with a separate e-mail address within the Office's e-mail system.
- C. Upon request, the Office will provide one (1) lockable file cabinet per POD for NTEU's exclusive use.

### **Section 11 – Voice Mail**

- A. The Office will continue to provide separate, working, voice mail boxes for the exclusive use of NTEU Chapter 251.

## ARTICLE 41

- B. Each NTEU representative in the field will have an IRS VMS voice mail box for use for NTEU business.

### Section 12

NTEU has the right to conduct two (2) information sessions of one hour at each POD (or building, in the National Office) to explain the provisions of this Agreement. Employees may attend one of the two sessions on duty time, subject to workload demands. The scheduling of the sessions will be by mutual agreement subject to being held within sixty (60) days of the effective date of the Agreement. The Office will not pay any travel expenses associated with these information sessions.

### Section 13

- A. The Office will provide the appropriate NTEU representative and NTEU National notice of plans to modify or alter office space and/or move employees into new office space when the Office becomes aware of such plans. Upon such notice, NTEU may request a briefing and request to negotiate.
- B. The Office will provide NTEU with all information related to the proposed modification of office space or move which would be available under 5 USC § 7114(b)(4). The parties agree that in such situations that information would include, but would not be limited to, building specifications, floor plans, and build-out requests.

## **ARTICLE 41 - DUES WITHHOLDING**

### Section 1

- A. This Article is for the purpose of permitting eligible employees who are members of NTEU to pay dues through the authorization of voluntary allotments from their compensations.

- B. This Article covers all eligible employees:

1. Who are members in good standing of NTEU; and
2. Who may have voluntarily completed Standard Form 1187, Request for Payroll Deduction for Labor Organization Dues, and who receive compensation sufficient to cover the total amount of the allotment.

- C. A properly submitted SF-1187 consists of an original SF-1187 with attached copies, or an original SF-1187 with two (2) photocopies, or a signed fax of an SF-1187 with two (2) copies, submitted by a local Union Official to the Payroll Center.

- D. The Office shall automatically withhold, on a biweekly basis, the appropriate amount of dues from any bargaining unit employee who has submitted a SF-1187.

### Section 2

Certification and remittance procedures shall be as follows:

- A. Dues will be wire transferred to the bank account designated by NTEU;
- B. Electronic files or magnetic media will be transferred to the Administrative Controller, National Treasury Employees Union, 1750 H Street NW, Washington, DC 20006; and
- C. NTEU's National President or any other chapter officer who has submitted proper notification to the servicing personnel office is authorized to make the necessary certification of SF-1187.

### Section 3

NTEU will:

- A. Inform and educate its members on the voluntary nature of the system for allotment of NTEU dues, including the conditions under which the allotment may be revoked;
- B. Purchase and distribute to its members SF-1187 forms;
- C. Inform the Office of changes in the certification and remittance procedures;
- D. Forward properly executed and certified SF-1187's using Transmittal Form 3210 to the employee's servicing Payroll Center on a timely basis;
- E. Inform the employee's servicing Payroll Center of the name of any participating employee who has been expelled or ceases to be a member in good standing in the NTEU within ten (10) days of the date of such final determination; and
- F. Inform the Office of any change in the formula for membership dues.

### Section 4

The Office is responsible for processing voluntary allotment of dues in accordance with this Article. The Office will:

- A. Upon receipt of a properly certified SF-1187 or SF-1188 by mail, the Payroll Center will stamp the date received legibly on the back of all copies and date stamp and sign the accompanying Transmittal Form 3210. The acknowledgement copy of Form 3210 and the NTEU copy of the SF-1187 will be returned to the appropriate NTEU office. Once a receipted Form 3210 is received, the Payroll Center will assume full responsibility for processing the SF-1187 according to Section 5. If the date

received is not stamped legibly or written legibly on the NTEU copy, the SF-1187 will be considered received by the Payroll Center on the receipt date of the transmittal Form 3210;

- B. Withhold dues on biweekly basis;
- C. Provide biweekly, within six (6) days of the close of a pay period, electronic files or magnetic media containing pertinent information including the total gross amount deducted for all employees, the total amount of prescribed costs retained, the net amount remitted, and any other information NTEU deems reasonable from the existing data base of dues paying members;
- D. Discontinue allotments when required by applicable rules and regulations;
- E. Notify the employee and NTEU when an employee is not eligible for an allotment, along with the reasons for the decision, e.g., a temporary promotion out of the unit;
- F. Withhold new amounts of dues upon certification from NTEU's National President provided that the formula for withholding has not been changed during the past twelve (12) months;
- G. Transmit remittance checks to the allottee designated by the NTEU;
- H. Provide electronic files or magnetic media to the NTEU or its designee; and
- I. Stamp on a properly executed SF-1188 the date received and transmit it to the Payroll Center so that the revocation will be effected consistent with provisions outlined in Section 5 of this Article.

## **Section 5 – Starting and Stopping Dues Withholding**

The effective dates for actions under this Agreement are as follows:

- A. The SF-1187 dues withholding form will be entered into the payroll system as soon as practical but not later than the pay period following receipt of the SF-1187 in the Payroll Center.
  - B. Changes in the formula for dues withholding will begin the first pay period designated by NTEU's National Office (this formula shall be provided to the Office a minimum of thirty (30) days before the effective date of the change).
  - C. SF-1188 revocation of dues withholding notices must be submitted and processed as follows:
    1. SF-1188 revocation notices for employees who have had dues allotments in effect for more than one (1) year must be signed by the employee no later than the last day of USDA pay period fifteen (15) each year. These revocations will not become effective until USDA pay period eighteen (18). To revoke dues withholdings, employees must have had dues withheld for at least one (1) year.
    2. SF-1188 revocation notices for employees who have not had dues allotments in effect for one (1) year must be signed on or before the one (1) year anniversary date of their dues allotment. The SF-1188 will become effective the second full pay period after the employee's anniversary date.
    3. Unless covered by an exception in 3(c), before any SF-1188 may be processed, it must be initialed by an NTEU Chapter President or his or her designee.
      - (a) If an employee submits a form directly to NTEU, NTEU will initial and submit the SF-1188 within five (5) workdays to the Office's Labor and Employee Relations Division.
      - (b) If an employee submits a signed SF-1188 directly to the Office that does not have a Chapter President's initials, the Office will inform the employee of the requirement for obtaining the Chapter President's initials. Additionally, the Office will send National NTEU a copy of the SF-1188 (and notify the designated NTEU representative for the respective post of duty [POD] for the employee). These actions will be taken within three (3) workdays of the Office's receipt of the signed SF-1188.
      - (c) If NTEU does not return an initialed SF-1188 within thirty (30) days after the date the Office sent it pursuant to 3(b), the SF-1188 is deemed initialed by NTEU and eligible for processing unless the employee notifies the Office that he or she intends to withdraw the SF-1188.
4. Pay Period 18 Processing Procedures
    - (a) The Office has the responsibility to contact NTEU in Pay Period 16 to determine whether there are any forms in NTEU's possession that have been signed by an employee but not yet initialed by NTEU and forwarded to the Labor and Employee Relations Division.



(b) No later than the first workday of Pay Period 18, the Office will send National NTEU a list of all of the SF-1188s it intends to process in PP 18.

(c) An employee who has previously submitted an SF-1188 may inform the Office in writing that the SF-1188 should not be processed and the Office will comply with that request so long as the Office receives the written notice before the effective date of revocation.

D. Termination 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 Office.

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

## **Section 6 - Overpayments to NTEU**

A. NTEU will pay no fee for these services.

B. Upon determination by the Office that dues withholding for an employee was not timely terminated and resulted in an overpayment to NTEU, the Office will effect an adjustment to reimburse the employee. The amount repaid to the employee will be charged to a NTEU overpayments account.

C. Each pay period, the Office will forward a copy of any bill for dues overpayments, with an accompanying document prescribed by the Debt Collection Act of 1982, to the Administrative Controller, National Treasury Employees Union, 1750 H St. NW, Washington, DC 20006. This bill will identify amounts that were reimbursed to employees as a result of dues withholding, and pay periods in

which overpayments were made to NTEU. The bill sent to NTEU will request repayment of overpayments that were made to NTEU. The document accompanying the bill will include a statement that debts due to the Government for more than thirty (30) days are subject to interest, to the extent required by law, as well as Treasury Department policy regarding the assessment of other fees if delinquent. The bill sent to NTEU will request payments be made to "U.S. Department of Agriculture" and will specify that the payment, and a copy of the bill, be mailed to an address designated on the bill for the USDA National Finance Center. The right of NTEU to request a waiver of overpayment in accordance with 4 CFR § 101, or to dispute the amount of the overpayment will also be contained in the accompanying document. A copy of the bill and accompanying document will be forwarded to servicing Payroll Centers for use in determining the start of the period for requesting waivers by NTEU.

D. Upon receipt of the amount due from NTEU the accounts receivable for the applicable pay period will be closed. If a waiver or partial waiver of overpayment is timely requested by NTEU the Office will suspend collection of the amount in question pending adjudication by the Office in accordance with 4 CFR § 101. The Office will notify the local NTEU chapter of the determination.

E. To be considered timely, a request for waiver of overpayment must be submitted to the Office by the local NTEU chapter within forty (40) calendar days from the "waiver control date" for the bill for dues overpayment that is sent to the Administrative Controller, NTEU, from the Office.



- F. The “waiver control date” will be determined to be forty (40) days following the bill date, which includes ten (10) days associated with the mailing of the bill from the USDA National Finance Center to NTEU. The purpose of this date is limited to its express use in the waiver request process. The bill should be received by the tenth day following the bill date.
- G. The bill will be presumed received on this date unless NTEU's National Office informs the Office in writing three (3) workdays following receipt of the bill by NTEU. The Office will provide written acknowledgement of the revised “waiver control date” to NTEU.
- H. Denials of NTEU requests for waiver of overpayment will be subject to the institutional grievance procedure in Article 34 (Institutional Grievance Procedure and National and Consolidated Grievance Procedures) of this Agreement.

## Section 7

- A. If an employee moves from a permanent bargaining unit position in one POD to a permanent bargaining unit position in another POD, dues withholding will not be canceled.
- B.
  - 1. Employees who leave the unit temporarily will have the withholding suspended and will have the withholding automatically continued once they return to the unit.
  - 2. The NTEU National Office shall be provided electronic files or magnetic media, each pay period, of all employees who have changed status that pay period vis-à-vis their bargaining unit position.

## Section 8

- A. The total error in the amount of dues withheld shall be adjusted as soon as practical after the error has been detected by the Office or written notification is received from NTEU or employee of an error.
- B. When an underpayment to an employee results in an overpayment to NTEU (for example, the Office fails to timely terminate dues withholding after receiving a properly submitted employee request), the Office will refund the payment to the employee in accordance with Subsection 6(B) of this Article. However, employees who are assigned to positions out of the bargaining unit, and who, due to an error, do not have their dues canceled will be sent a notice informing them of the error and asking them to indicate whether they would like their dues refunded. Any requested refunds will be made to the employee in a timely manner. Section 6(B) above will apply to any refunds which result in an overpayment to the Union.
- C. When the Office fails to commence dues withholding timely or otherwise fails to remit dues owed, the Office will pay the full amount to NTEU and recoup the funds from the employee's salary through an adjustment, subject to the employee's right to seek waiver of overpayment. When the total amount owed by the employee is less than ten (\$10) dollars, the entire amount will be withheld in one (1) pay period, to the extent it does not exceed 15% of disposable pay. When the total amount owed by an employee is more than ten (\$10) dollars, the deductions will be made in accordance with the Debt Collection Act.

- D. When an adjustment is made to an employee's salary to recoup dues withholding, the employee will be issued written notification by the servicing Payroll Center of the Office's intent to offset in accordance with the Debt Collection Act of 1982. This notification will contain information relating to the amount and nature of the debt, additional information required by the Debt Collection Act of 1982 as implemented by 31 CFR Part 5, Subpart B and will notify the employee that:
1. They have the right to request a waiver of overpayment pursuant to 4 CFR Part 91; and
  2. Denials of employee requests for waiver of overpayment will be subject to the grievance procedure as outlined in Article 33 (Employee Grievance Procedure) of this Agreement.
- E. Disputes arising out of dues withholding situations where either the Office has failed to withhold the appropriate amount of dues from an employee, that is, the employee or Office owes NTEU money; or where the Office has paid NTEU money collected via dues withholding inappropriately, shall be resolved in the following manner:
1. A written statement with information regarding the potential dispute will be provided to NTEU.
  2. On receipt of the tape, NTEU will review the information provided, identifying potential problems. NTEU will then send information to its local chapters requesting the local chapters to pursue potential problems with the local servicing Payroll Center. Local NTEU chapter officials must review the information provided them and contact the servicing Payroll Center within thirty (30) calendar days of the date on which NTEU received the tape from the Office (that is, pay day referenced in Section 4(C) and 7(B)(2) above). The only exception provided for not making contact within thirty (30) days is when NTEU has informed the Office of NTEU's not having received the tape. Time used to review the information provided by NTEU by local NTEU officials will be charged against official time as provided by Article 39 (NTEU Representatives and Official Time).
  3. Once contact has been made by the local NTEU chapter official with an employee's servicing Payroll Center regarding a specific problem(s), the employee's servicing Payroll Center shall within ten (10) workdays, unless extended by mutual agreement, review the case(s) presented and decide if a problem does in fact exist, and how it may be corrected (i.e., pay adjustment). Pay adjustments will be accomplished within a reasonable amount of time, usually within two (2) pay periods. The employee's Payroll Center will provide the local NTEU chapter with information relating to the subject problem. If the determination results in a pay adjustment, the affected employee(s) will be notified by the servicing Payroll Center in writing of its decision within three (3) workdays. In such cases the employee will have fifteen (15) workdays to request a waiver of overpayment.
  4. If a problem is not resolved at the local level in accordance with Subsection 8(E)(3) above, then it will be processed to the appropriate

second step of the grievance procedure in accordance with Article 34 (Institutional Grievance Procedure and National and Consolidated Grievance Procedures).

5. Pay adjustments will be accomplished within a reasonable amount of time, usually within four (4) pay periods.

## Section 9

- A. When a bargaining unit employee is permanently placed in a non-bargaining unit position, a "J" code will be provided to NTEU on the biweekly dues transmission for the employee, and the following notice will be mailed to the employee's home address by the Office within thirty (30) days of the effective date of the personnel action:

### "Termination of Dues Withholding"

Regulations governing dues withholding to a labor organization require that dues withholding be automatically canceled whenever an employee is placed in a non-bargaining unit position.

You were recently subject to a reassignment or promotion which will automatically terminate your dues withholding. The final dues withholding will be made for the pay period in which the action is effective.

If you have any questions regarding the termination of your dues withholding, you may wish to contact your NTEU Chapter. The Civil Service Reform Act of 1978 permits you to continue your membership.

- B. When a bargaining unit employee is temporarily placed in a non-bargaining unit position, a "L" code

will be provided to NTEU on the biweekly dues transmission for the employee, and the following notice will be mailed to the employee's home address by the Office within thirty (30) days of the effective date of the personnel action:

### "Suspension of Dues Withholding"

Regulations governing dues withholding to a labor organization require that dues withholding be automatically suspended whenever an employee is placed in a non-bargaining unit position. Upon your return to a bargaining unit position, the Office will automatically reinstate the withholding of NTEU dues.

- C. When a bargaining unit employee requests and/or submits paperwork for retirement from the Office, the designated NTEU representative will be notified within two (2) workdays.

## Section 10

- A. Subject to the provisions of Section 10(B), the Office will deduct Union dues from an employee's back pay award when the employee has an allotment for dues withholding in effect at the time of the action giving rise to the back pay.
- B. Employees who have been terminated from employment and who are subsequently reinstated with back pay will have their dues withheld from their back pay award only if requested by the employee.

## Section 11

- A. The Office's biweekly electronic or magnetic media transfers will include the following information:

1. Whether the employee retired or was separated;
2. Whether the employee is continuing to be carried in non-duty status;
3. Whether the employee is on a full time, part-time, seasonal, intermittent work schedule and if the employee is serving on a term, temporary, career, career-conditional, or excepted appointment;
4. The geographic locality of each employee that is used to determine the appropriate locality pay; and
5. The base pay of each employee, his or her grade and step, pay structure (for example, General Schedule or Wage Grade, etc), amount of NTEU National dues withheld, local chapter dues withheld, and the total dues withheld.

- B. The Office will also provide, on a weekly basis, a tape of bargaining unit employees who were dropped off the bargaining unit list since the previous biweekly tape and an explanation concerning why they were dropped.

## **Section 12**

Employees may elect as many as six (6) additional discretionary allotments (which are not savings allotments) that employees may use to have additional voluntary deductions withheld from their pay. Such discretionary allotments may be used, consistent with regulations, for various purposes such as insurance, NTEU's Political Education Fund (TEPAC), facilities jointly sponsored by the IRS and NTEU, such as day care, or other benefits that may be offered by NTEU.

## **Section 13**

The Office shall provide the NTEU National Office with a biweekly electronic file or magnetic media of SF-1187's that have been processed by the Payroll Centers. This tape will include the pay period in which SF-1187's were processed and the expected effective date.

## **ARTICLE 42 - DIVERSITY AND EQUAL EMPLOYMENT OPPORTUNITY**

### **Section 1**

The Office and NTEU agree to promote a workplace free from discrimination on the basis of race, color, national origin, age, sex, disabling condition, sexual orientation, parental status, protected genetic information and religion and free from sexual harassment. The Office and NTEU further agree to promote diversity and equal employment opportunities within the Office to ensure that the Office has a diverse workforce.

### **Section 2 - Diversity and Equal Employment Opportunity Advisory Committee**

- A. The Office's Diversity and EEO Advisory Committee (DEEOAC) will be comprised of twelve (12) members – six (6) appointed by the Office, and six (6) appointed by NTEU. The representation from each side will be divided equally between National Office employees and field employees.
- B. The Committee will meet quarterly unless both NTEU and management agree that no meeting is necessary.
- C. The meetings will be held in Washington, D.C.
- D. Counsel NTEU representatives on the Committee from outside the Washington, D.C. area will generally attend via conference call or LIVE meeting/video conference.

- E. But, upon request from the NTEU Chair / Vice Chair on the Committee, there can be one in-person Committee meeting per calendar year, and Counsel will pay travel and per diem expenses for all Counsel employees on the Committee for this meeting. The Office will not pay any other travel or per diem expenses relating to meetings held as part of this Article.
- F. When possible, the dates of any such in-person meeting will be coordinated with the dates of any in-person meeting under Article 43.
- G. The parties will rotate the selection of chairperson and vice-chairperson on the Committee between NTEU and the Office each year.
- H. Notwithstanding the above, the Office will continue to designate individual employees or groups of employees to perform functions such as the planning and conduct of Federal Women's Program, Black Heritage, and Native American observances.

### Section 3 - Committee Responsibilities

- A. Operations and functions of the Committee established through this Article include the following:
  - 1. Identifying and bringing to the attention of the Office management any trends, problems, issues, or circumstances of a diversity or EEO nature;
  - 2. Focusing the attention of the Office on specific personnel management practices or problems of a diversity or EEO nature which are producing or could produce dissension and dissatisfaction among employees;
  - 3. Advising the Office of those actions of a diversity or EEO nature that need to be explored or undertaken to

prevent, alleviate, or terminate any practices that tend to foster or promote dissatisfaction among the workforce;

- 4. Promoting and communicating the efforts of the Office to achieve and operate a realistic, ongoing diversity and EEO program;
- 5. Acting as a forum for an exchange of ideas and action proposals on sensitive issues, matters, or concerns of a diversity or EEO nature;
- 6. Assisting the Office by encouraging the support and cooperation of the total work force in the promotion of the overall diversity and EEO program;
- 7. Commenting upon any Office equal employment plan before the document is submitted; and
- 8. Advising the Office in recruiting a diverse work force.

- B. The Committee will consider the Office's diversity and EEO programs and write an annual report recommending actions the Office could take to enhance diversity and EEO.

- C. The Committee established through this Article shall not:
  - 1. Be used as a media or means to express, present, or press employee demands upon the Office;
  - 2. Be used as a channel for receiving, reviewing, or considering individual EEO complaints;
  - 3. Engage in the conduct of investigations or the processing of formal or informal EEO complaints; or



4. Engage in or otherwise assume the role reserved to exclusively recognized labor organizations nor serve as forums for discussion of employee organization or NTEU matters.

#### **Section 4**

- A. The Office will post on all official bulletin boards and the Office's intranet the names and telephone numbers of the individuals to contact in order to initiate an EEO complaint, as well as a summary of EEO complaint procedures. The Office will also post the complete EEO complaint procedures on the intranet. At the time an employee enters into EEO counseling, the Office will provide a detailed list of employee rights, procedures, and alternatives in the EEO process. See Appendix 42-1.
- B. The Office will share all relevant and requested information about the contract EEO counselor program with the Committee upon request.

#### **Section 5**

The Office will annually provide the Committee with the following:

- A. A copy of the statistical analysis of the Counsel workforce prepared for the EEOC Management Directive 715 submission. If the Committee established under this Article wants additional statistical information relating to EEO topics, the Office will respond to requests for such information, to the extent that the information is consistent with law and reasonably available to the Office. For example, the Committee could request statistics about promotions broken out by race, national origin, and gender for a particular purpose;
- B. Information obtained from surveys (including the SFA), exit interviews,

studies, or initiatives planned, pending, or undertaken of an EEO or affirmative action nature;

- C. Any Office-wide diversity and EEO-related objectives and procedures; and
- D. A sanitized report summarizing EEO allegations, formal complaints, and resolutions.

#### **Section 6**

- A. The Office will grant members official time to participate in meetings.
- B. Operating procedures for the Committee established under this Agreement will be determined by the members of the Committee.
- C. Any recommendations made under Section 3(B) will be presented to the Chief Counsel and National President of NTEU. The Office will respond in writing to the Committee recommendations.
- D. Nothing in this Article shall augment or detract from NTEU's statutory right to bargain over any issues, provided that NTEU will not initiate bargaining over any issues which are being actively addressed by the DEEOAC. If the Committee fails to issue a report or recommendations concerning a subject that they have addressed, or if the Office fails to act upon a Committee report or recommendations, NTEU shall be free to initiate bargaining to address such issues.

### **ARTICLE 43 - NATIONAL LABOR-MANAGEMENT RELATIONS COMMITTEE**

#### **Section 1**

NTEU and the Office, as evidenced in the Preamble to this Agreement, recognize that the participation of employees in the formulation and implementation of personnel policies and practices affects their well being



and the efficient administration of the Government. The parties further recognize that the entrance into a formal agreement with each other is but one act of joint participation, and that the success of a labor-management relationship is further assured if a forum is available and used to communicate with each other. The parties therefore have established a Labor-Management Relations Committee (LMRC) for the purpose of exchanging information and the discussion of matters of concern or interest to each of them, in the broad area of personnel policy or practice.

### Section 2

The LMRC will be a National-level ad hoc committee, and thus will meet at the request of either party, but no more than quarterly. Requests for a meeting by NTEU will be made by the NTEU National President (or designee) and requests for a meeting by the Office will be made by the Director, Labor and Employee Relations. The meetings will be held in Washington, D.C. NTEU will be represented by up to six (6) representatives at these meetings. In addition, National NTEU staff personnel may attend.

### Section 3

The parties will exchange agenda items and, when circumstances permit, the names of National NTEU staff personnel, if applicable, seven (7) days before any ad hoc LMRC meeting. Once agenda items have been exchanged, the parties will discuss whether an in-person meeting is necessary. Matters not on the agenda may be discussed by mutual consent.

### Section 4

Counsel employees serving on the LMRC will receive official time to participate in the meetings. Counsel NTEU representatives from outside the Washington D.C. area will generally attend the LMRC via conference call or LIVE meeting/video conference. But, upon request from National NTEU, the

LMRC may meet in person once per calendar year. Counsel will pay travel and per diem expenses for up to four (4) Counsel employees for any such yearly meeting. The Office will not pay any other travel or per diem expenses relating to LMRC meetings. When possible, the dates of any such in-person LMRC meeting will be coordinated with the dates of an in-person meeting under Article 42.

### Section 5

LMRC meetings are held to discuss general personnel practices, policies, and working conditions, including those that might give rise to specific disputes, complaints, or appeals, so that potential problems might be identified for possible preventive action.

## **ARTICLE 44 - DAY CARE AND CHILD CARE**

### Section 1

- A. The Office will ensure that employees will have equal access, in accordance with established criteria, to any day care facility established for the benefit of IRS employees and at the same cost as is charged to IRS employees.
- B. If the Office is unable to provide such access, this Article may be reopened by NTEU at any time for the purpose of negotiating the establishment of day care facilities for Office employees.

### Section 2 - Child Care Subsidy Program

- A. The Office will provide all employees with information (program materials) regarding the Child Care Subsidy Program on an annual basis. These program materials will include Application Forms and Child Care Subsidy Agreement Forms. The Office may conduct an annual survey to find out how many employees may be eligible to participate in this program.

- B. Based on the availability of funds, and subject to necessary statutory authority, the Office commits to maintain current funding levels for this Program, adjusted yearly to reflect changes in the consumer price index (CPI). This amount includes administrative costs for vendor's fees. If the Program is funded at a level below the current level (including any CPI adjustments) or if the statutory authority to fund this program is withdrawn, NTEU may reopen negotiations on this Article.
- C. Depending on the number of employees who apply and are certified as qualified for the program and the number of children, the amount of subsidy may range from a minimum of \$100 per month per child up to a maximum of \$415 per month per child. No employee may receive more than \$5,000 under this provision in any calendar year.
- D. The following employees may apply for this program:
1. Any permanent full time or part time employee;
  2. Whose total family adjusted gross income (AGI) is \$51,500 (or the GS-07 step 7 pay rate for the Washington DC Area if that pay rate is higher) or less for the previous tax year;
  3. Whose child (or children) are under thirteen (13) years of age; and
  4. Whose child (or children) is (are) enrolled in a licensed child care facility (including a properly licensed home-care arrangement).
- E. Employees who are interested in applying for child care subsidy will be required to complete an application form including certification that their total family income (AGI) from the previous tax year is not more than the amount specified in D above. Applications will be submitted to the vendor specified in the program materials.
- F. The vendor will review the applications and certify employees for child care subsidy beginning with the qualified applicant with the lowest total family income up to those qualified applicants with a total family income as established in D, above.
- G. Employees selected to receive child care subsidy will be notified in writing by the vendor. Each selectee will be required to complete the Child Care Subsidy Agreement. The signed agreement should be returned to the vendor. The vendor will make payments directly to the child care facility or to the licensed child care provider identified by the employee.
- H. Child care subsidy payments will cease to be made if:
1. The person who was certified to receive the benefit is no longer employed by the Office; or
  2. The child (or children) on whose behalf the child care subsidy was being paid is no longer enrolled in a licensed child care facility or with a licensed child care provider that was certified to receive the payment, whichever occurs first.
- Each employee selected to receive child care subsidy is required to notify the Office and the vendor if either of the aforementioned changes occur.
- I. The subsidy amount is not dependent on the marital status of the parent(s). If both parents are Office employees, only one child care subsidy amount will be paid.

## **ARTICLE 45 - MID-TERM BARGAINING**

### **Section 1 - General**

- A. This Article establishes procedures for mid-term bargaining between the parties.
- B. Consistent with the rights and duties of the parties under the Federal Service Labor-Management Relations Statute, the Office will notify NTEU, in writing, and afford NTEU an opportunity to bargain mid-term changes in personnel policies, practices, and conditions of employment. The Office will not implement any proposed changes before completion of bargaining, including impasse resolution procedures, except as pursuant to law.
- C. Negotiation sessions will be scheduled for such times and places as are mutually convenient, taking into consideration the nature and proposed implementation date of the change.
- D. All agreements reached will be reduced to writing and executed by both parties.
- E. Copies of agreements executed pursuant to this Article will be distributed by the Office to affected employees.
- F. All agreements will have an "effective date" and a "termination date." The termination date will not be later than the termination date of this Agreement.
- G.
  - 1. All agreements negotiated under this Article will be subject to agency head approval pursuant to 5 USC § 7114(c).
  - 2. In the event of a disapproval, NTEU will have the option of renegotiating the disapproved agreement. This option must be exercised by NTEU by giving notice to the Office within twenty-one (21) days of notice of disapproval.

- H. Proposals declared non-negotiable and subsequently found negotiable will be timely negotiated, if requested by either party.
- I. The procedures described above may be modified by agreement of the parties, on a case-by-case basis.

### **Section 2 - Mid-Term Negotiations**

- A. Either party may initiate mid-term bargaining by proposing changes to the conditions of employment of bargaining unit employees. Either party, however, may initiate mid-term changes only to the extent that such changes do not relate to matters covered by this Agreement or any other agreement between the parties, and provided further that the changes do not relate to matters over which either party has waived its right to bargain during the negotiation of this Agreement.
- B. The party proposing the change must serve a notice of the proposed change on the opposing party. The notice will normally be served via e-mail and fax with telephonic notification of transmission. Notices issued by NTEU will be served on the Director, Labor and Employee Relations. Notices issued by the Office will be served on National NTEU.
- C. The notice served by either party must include the following:
  - 1. A description of the proposed change;
  - 2. A statement of the general impact of this change on the bargaining unit; and
  - 3. An explanation of the reasons for the change.
- D. Within fourteen (14) days of receipt of such notice, the receiving party may

either request to negotiate or request a briefing. Such a request must be made in writing or via e-mail.

- E. In the event of a briefing, neither party is required to be represented by individuals authorized to enter into an agreement and negotiations will not be conducted at that time.
- F. Within fourteen (14) days of submission of a request to negotiate, or fourteen (14) days of the date of the briefing (whichever is later), the receiving party may submit its proposals.
- G. Negotiations will be scheduled not later than fourteen (14) days from the proposing party's receipt of proposals.
- H. In the event of impasse, either party may request the services of the Federal Mediation and Conciliation Service (FMCS). Additionally, the parties may mutually agree to request the services of a private mediator-arbitrator to obtain a non-binding recommended resolution of the impasse. A request to FMCS, or a request to engage the services of a private-mediator, must be made within fourteen (14) days of the date the requesting party has notified the other party that an impasse has occurred. Unless otherwise determined by the mediator or the mediator-arbitrator, mediation will not exceed two (2) days.
- I. Any impasse not resolved through the FMCS, or through the private mediator-arbitrator, may be submitted by either party to the Federal Service Impasses Panel for consideration of the matter under its regulations. Such submission must be made within fourteen (14) days of completion of mediation.
- J. NTEU Headquarters may delegate negotiation authority under this Section to any designated NTEU representative.

### **Section 3**

- A. NTEU bargaining teams may include up to four (4) bargaining unit members on official time. However, if the Office has more than four (4) members on its team, NTEU may have an equal number, each of whom will be on official time. There is no limit on the number of professional staff members on any NTEU team.
- B. For Office-initiated mid-term changes, the Office will pay the travel and per diem expenses of up to three (3) members of the bargaining team who are Office employees. For Union-initiated mid-term changes, where the parties mutually agree the Office will pay travel and per diem expenses for members of the bargaining team who are Office employees.

## **ARTICLE 46 - MISCELLANEOUS PROVISIONS**

### **Section 1 - Solicitation of Contributions**

- A. Participation in the Combined Federal Campaign, blood donor drives, bond campaigns, and other worthy drives will be on a completely voluntary basis. This does not preclude general publicity of the programs by the Office.
- B. Immediate supervisors may not collect pledges or contributions from individual employees under their supervision.

### **Section 2 - Death Benefits**

The Office will notify a deceased employee's next of kin of any benefits to which the next of kin may be entitled, and assist the next of kin in filing claims for unpaid compensation, including lump sum leave payments and any retirement insurance or social security benefits, and when necessary, provide information for the preparation of the Federal income tax return by the next of kin.

### **Section 3 - Employee and Office Debts**

- A. Collection of employee debts arising out of overpayments of pay, benefits or reimbursements will be in accordance with the debt collection procedures set forth in 31 CFR Part 5, provided that where, through administrative error, an employee receives an amount that would normally go unnoticed or undetected, such employee will upon request be permitted to repay the excess over the number of pay periods equal to the total pay periods over which the payments were made and, provided further, that these repayments will be made in amounts of at least \$10 per pay period unless a lesser amount constitutes full payment.
- B. If an employee terminates employment with the Office before liquidation of any indebtedness described in (A) above, the Office retains the right to satisfy any outstanding balance from any funds due and owing the employee.
- C. When, through administrative error, the employee is denied benefits or pay to which otherwise entitled, restoration of said benefits or pay will be made in accordance with applicable regulations and as expeditiously as practicable.
- D. When an employee receives an overpayment of pay and allowances, the Office will waive the obligation to repay such overpayment if the conditions of 5 USC § 5584, 31 USC § 3771, 31 CFR Part 5 and 31 CFR Parts 900-904 are satisfied.
- E. If a requested waiver of overpayment is denied, the employee will be notified of the reasons for that denial in writing.

### **Section 4 - Salary Checks**

- A. When an employee's regular salary check is not issued, the employee will, when it is practical to do so, be provided

with an emergency salary check within seventy-two (72) hours of providing the Office with notification on the proper form for that purpose.

- B. When an employee's regular salary check was issued but it was lost, stolen, mutilated or not received, the employee will, when it is practical to do so, be provided with a recertified salary check within five (5) to seven (7) work days of providing the Office with notification on the proper form for that purpose.
- C. When employees apply for or receive emergency or recertified salary checks, they will be responsible for promptly notifying the Office if their regular salary checks are subsequently received, and for making adjustments to the Office.
- D. Where an employee fails to receive a regular salary check or receives a check that is erroneously reduced, and the employee cannot wait for an emergency salary check or recertified salary check to be issued through normal procedures, the employee will receive an emergency salary payment, to the extent practicable, equal to the net amount due the employee.

### **Section 5 - Federal Employee Health Benefits Program Contributions**

- A. Employees covered by this Agreement shall be covered by the provisions of 5 CFR Part 890, and any amendments thereto, relating to the Federal Employee Health Benefits Program (FEHB).
- B. Employees in a non-pay status or whose pay is insufficient to make FEHB premium payments will be notified and will make such payments in accordance with 5 CFR Part 890. Employees may make direct payments for FEHB contributions while they are in non-pay status, or have such payments deducted



from their salaries upon return to duty status.

1. At least twenty-one (21) days in advance of being placed in a scheduled non-pay status for more than two (2) pay periods, or as soon as practicable if there are less than twenty-one (21) days between the date it becomes known that an employee will enter non-pay status for more than two (2) pay periods and the effective date of entering non-pay status, the Office will give employees written notice of their options under this Subsection. The written notice shall provide employees with all necessary information, for example, where to make direct payments.
2. Such employees may choose to make direct premium payments on a current basis in any amount of \$5 or more.
3. When employees do not make direct premium payments to repay premiums, the Office will make automatic deductions no earlier than the second contiguous pay period following the employee's return to pay status. In accordance with 5 CFR Part 890, the Office will deduct the current premium plus a deduction equal to one premium payment until the debt is repaid. The deductions will not exceed 15% of disposable pay.
4. An employee may repay premiums accrued, through paycheck deductions, in lesser amounts than those identified in (3) above, if it is reasonably determined that to do otherwise would, considering the employee's personal circumstances, cause a financial hardship. An employee may appeal such proposed deductions in accordance with the Debt Collection Act.

Employees may also request a waiver of repayment in accordance with applicable law and regulations.

5. Notwithstanding any of the foregoing, the rights described above will be modified to the extent that they are modified for IRS employees.

## **Section 6 - Unlawful Concerted Activity**

NTEU will not encourage or initiate any unlawful concerted activity on the part of an employee or group of employees that would harm or adversely affect the operation and/or mission of the Office, nor will it condone any such activity by failing to take affirmative action to prevent or stop it.

## **Section 7 - Contracting Out**

- A. Within seven (7) days of the effective date of this Agreement, the Office will provide National NTEU with a complete schedule of all A-76 reviews. Any changes or additions to this schedule will be provided to National NTEU within seven (7) days of said change or addition.
- B. Sixty (60) days before the Office's review, the Office will notify potentially adversely affected employees and National NTEU of the impending review at a meeting. Such meetings will be scheduled so as to accommodate the work schedules of such employees. At least three (3) days before the meeting, such employees will be given a copy of OMB Circular A-76.
- C. The Office agrees to solicit recommendations from potentially adversely affected employees and National NTEU as to the most efficient and effective organization. To this end, National NTEU may designate two (2) employees for every eleven (11) (or major fraction thereof) potentially adversely affected employees to constitute a committee to develop these



recommendations. Such employees will receive a reasonable amount of official time for the committee work.

1. The committee's recommendations will be submitted to the Office no later than sixty (60) days after the date of the meeting referenced in Subsection B, above.
2. The Office will review the recommendations and advise the committee and National NTEU of the results of its review.
3. To assist the committee, the Office will furnish National NTEU, upon request, copies of the current staffing pattern of the organizational unit under A-76 review, the charter that sets forth the task of the organizational unit under A-76 review, and the draft statement of work.

D. The office will serve National NTEU with copies of all invitations for bids or requests for proposals at the time they are released by the contracting officer to potential offerors.

E. The Office will notify National NTEU and potentially adversely affected employees at a meeting of the determination that the cost comparison will result in the award of a contract. Such meeting will be held within seven (7) days of that determination.

F. Within fourteen (14) days after the determination that a cost comparison will result in an award to a contractor, the Office will provide National NTEU with the cost comparison form, the name of the successful bidder, and a summary description of the most efficient organization.

G. Unless contrary to law or regulation, the Office will include in its invitation for

bids, or requests for proposals, the following requirements:

1. That employees who are identified as adversely affected by the decision to contract will receive the right of first refusal by the contractor for employment openings for ninety (90) days after the beginning of contract performance;
2. That no later than seven (7) days after the contract award, the contractor will furnish the contracting officer with the following:
  - (a) A list of employment openings; and
  - (b) Sufficient job application forms for adversely affected federal employees.
3. That no later than fourteen (14) days after the contract award, the contracting officer will furnish the contractor a current list of adversely affected federal employees exercising the right of first refusal, along with their completed job application forms;
4. That by the contract start date, the contractor will provide the contracting officer with the following:
  - (a) The names of adversely affected federal employees offered employment openings;
  - (b) The date the offer was made;
  - (c) A brief description of the position;
  - (d) The date of acceptance of the offer and the effective date of employment;
  - (e) The date of rejection of the offer, if applicable, and the salary and

benefits contained in the rejected offer; and

- (f) The names of any adversely affected federal employees who applied but were not offered employment and the reason(s) for withholding an offer;

5. That for a period of ninety (90) days after the contract start date, the contracting officer will periodically provide the contractor with an updated listing of adversely affected federal employees, reflecting employees recently released from their competitive level or separated as a result of the contract.

H. An adversely affected employee's right to first refusal to jobs with the contractor will not be abrogated by a reassignment.

I. The Office will provide National NTEU, within seven (7) days of its receipt, information regarding the right of first refusal required to be exchanged under OMB Circular A-76 between the contractor and the contracting officer.

J. The Office will notify, in writing, adversely affected employees of their rights of first refusal within three (3) days after the award of a contract.

K. Potentially adversely affected employees may register for both the Priority Placement Program under Article 19 (Priority Placement Program) of this Agreement or the Department of the Treasury's Priority Placement Program, as appropriate.

L. The Office will provide adversely affected employees advice and assistance in applying for job placement programs including contractor jobs pursuant to the right of first refusal, and registration in Government-wide placement programs, such as the Displaced Employee Program (DEP),

and Interagency Placement Assistant Program (IPAP). Such employees will receive reasonable administrative time to complete applications and/or registration forms for job placement, for seeking the advice and assistance from the Office, and for considering and applying for jobs with any or all of the above sources. If funds are available, the Office will provide such employees with seminars or other assistance on resume writing and job interviewing techniques.

M. The Office will ask the Department of Labor to establish a program or system whereby adversely affected employees are timely made aware of private sector job opportunities.

N. Once the Office submits any FAIR Act information to the Department of Treasury, that information will be provided to National NTEU within five (5) days.

## Section 8

If the Office chooses to hold reorientation sessions (for example, sessions on standards of conduct, retirement/FEGLI benefits and options, and any other benefit programs offered by the Federal government to its employees), NTEU will have the right to participate in these reorientation sessions on the same basis described in Article 37 (NTEU Rights). The Office will maintain links on the Office intranet to federal government sites that contain such information.

## Section 9

A. In the event that there is a vacancy or change in office desk/space location, the bargaining unit employees in the lowest identifiable unit where the vacancy occurs shall determine among themselves what the seating arrangements shall be, subject to work related considerations.

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- B. If the bargaining unit employees cannot reach a decision as to the seating arrangements, the issue will be resolved by seniority. This provision does not authorize a bargaining unit employee to “bump” another bargaining unit employee unless the moves are involuntary and caused by management action. For purposes of this Section, seniority is determined by SCD (service computation date) unless NTEU determines that another seniority rule should exist for a particular post of duty.
- C. When offices/desks that were previously occupied by bargaining unit employees become vacant and the Office decides not to make that space available to bargaining unit employees, the Office will notify the local Counsel steward in the field post of duty (POD), or the Chapter President in the National Office, as applicable, prior to implementing any new use for the space. The notice will include the reason(s) the office space is not being made available to bargaining unit employees and, upon request, the Office will meet with NTEU to discuss the vacant space and how it will be utilized.
- D. Other than issues relating to the seating arrangements of employees, which for all purposes are covered by this Agreement, the parties’ agreement to the language in Article 46 (Miscellaneous Provisions), Section 9 does not constitute a waiver of any of the legal rights of NTEU to bargain over matters related to space and moves.

### Section 10

All employees who handle return information will have either a lockable desk, a lockable file cabinet, or a private office.

### Section 11

In accordance with the Office’s obligation to reasonably accommodate disabled employees, the Office will provide materials

required by this Agreement in Braille form and/or software to any Office employees that are visually impaired.

### Section 12

During working hours, employees are authorized to make and receive short local personal telephone calls. Employees are also authorized to make long distance telephone calls in the following situations: (1) calls to toll free or 1-800 numbers, (2) calls charged to a personal phone or credit card, or (3) calls that are otherwise charged to another non-government number. In emergency situations, employees may make long distance calls of a reasonable duration so long as the call could not have been made at another time.

### Section 13

All employees must register to use the HR Connect system. HR Connect will electronically notify an employee when a Standard Form (SF)-50 is generated. The Office will make copies of SF-50s available to employees electronically through HR Connect. While the Office will no longer regularly provide paper SF-50s to employees, an employee will be provided a paper copy of an SF-50 upon request.

### Section 14

Employees are required to share their Outlook calendars with their managers, upon request. A supervisor may request that an employee indicate pre-approved absences of more than one (1) day on their Outlook calendar.

## **ARTICLE 47 - FURLOUGH DUE TO LAPSE IN APPROPRIATIONS/DEBT CEILING LIMITATIONS**

### Section 1

- A. The following procedures apply when a furlough is necessary due to lapse in appropriations/debt ceiling limitation,

failure to extend the debt ceiling, or lack of continuing resolution.

- B. On designated days, all Office employees will be furloughed except for those employees performing excepted or partially excepted functions. If the work of the Office dictates that particular employees are needed to perform specific duties, the Office retains the discretion to designate those employees as either excepted or partially excepted. Where the Office determines that additional employees are needed and when there is more than one (1) qualified employee in the same position and post of duty available for an excepted or partially excepted position, the Office will solicit volunteers. If there are too many volunteers, the issue will be resolved by seniority based on SCD. If there are insufficient volunteers, the issue will be resolved by inverse seniority based on SCD.
- C. The Office will provide each representative identified by NTEU by name and e-mail address with one (1) copy of the decision letter together with a list of those employees who have been designated as excepted and partially excepted.
- D. Employees are expected to listen to radio and/or television broadcasts to learn when an appropriation or continuing resolution has been signed or when the debt ceiling has been raised. NTEU reserves the right to negotiate additional methods of notifying employees about the conclusion of the furlough. Employees will then be expected to report to work no later than the next day after that announcement. In the event the announcement contains instructions on reporting to work later than that, employees will be expected to follow those instructions. A liberal leave policy will be in effect on the day employees are to return to work. Employees who travel during the time of

the furlough will be expected to return to work in accordance with the terms of this Article or with the more specific instructions.

## Section 2

If an employee is unable to use their scheduled "use or lose" annual leave due to the furlough and if they are unable to reschedule it, such annual leave will be carried over, provided that they qualify for carry over of annual leave.

## Section 3

- A. During any fiscal year in which a furlough occurs, the Office and NTEU shall jointly issue an all-employee notice with Questions and Answers attached that will advise employees of the impact of non-pay status on civil service benefits and programs and that will address some financial concerns employees may have when faced with a pay reduction. The Office will distribute this notice to all employees.
- B. The Office shall distribute a fact sheet to employees describing unemployment benefits available in all jurisdictions. At a minimum, this notice will contain information on unemployment benefits availability, the waiting period, if any, benefits eligibility requirements, and the location and phone number of State and/or municipal agencies responsible for administering the program in each jurisdiction.

## Section 4

Requests for outside employment for any employment during the period of the furlough will be in accordance with Article 6 (Outside Employment). Employees may not engage in any activity prohibited by the applicable rules of conduct. While in a non-pay status, such employees may engage in non-legal outside employment without notifying the Office. Upon return to duty

status, employees must submit notification under Article 6 (Outside Employment). If an employee wishes to engage in legal employment during a furlough, the employee must request approval in advance. Before the furlough begins, the Office will notify NTEU where such requests are to be submitted. The Office agrees to respond expeditiously, generally within three (3) business days of receipt of a completed request.

## Section 5

NTEU reserves the right to negotiate over furloughs caused by other than a lapse in appropriations/debt ceiling limitation, failure to extend the debt ceiling, or lack of continuing resolution, for example, a furlough caused by insufficient funding or insufficient work for the Office.

## **ARTICLE 48 – TELEWORK**

### Section 1 – Introductions and Definitions

A. This Article establishes basic procedures for implementing arrangements under which employees may work at alternate work sites. Telework is not an entitlement. The intent of the parties is to set forth a program that allows telework to the maximum extent possible without diminished employee or office performance, or without the need for increased staff, or without loss to the Office of the ability to realign work.

#### B. Definitions

1. “Telework” is a program that allows employees to work at an alternate work site. The Office has two types of telework – Level 1 and Level 2.
2. For the purposes of this Article, “alternate work site” means a location other than the traditional work site. Alternate work site does not include locations where the

Office sends employees to do work such as training sites, Treasury, Department of Justice, Congress, or the Tax Court. Alternate work site may include:

- (a) The employee’s residence;
- (b) A GSA telecommuting site; or
- (c) Any other location mutually agreed to by the employee and his or her supervisor (including, but not limited to, another Counsel post-of-duty (POD) where the employee has asked to work for his or her convenience).

3. For the purposes of this Article, the term “supervisor” means the immediate supervisor or, when the immediate supervisor is unavailable, the person designated to act in his or her absence.
4. “Portable work” is defined as work that is definable, specific and verifiable. Portable work is work that can be performed at the employee’s telework location, and accomplished independently of other co-workers, support staff, or the employee’s supervisor. Examples of such work might be but are not limited to: research, writing or reviewing briefs, drafting correspondence, conference calls, a redaction project, on-line training, or inputting CASE time.
5. “Verifiable” for purposes of this Agreement is defined as work that can be identified, described or produced by an employee if or when requested by management.

### Section 2 – Eligibility for Telework

In order for an employee to be eligible to telework, he or she must satisfy the following:



A. The employee must occupy a position in which the work performed is “portable.” The Office has no obligation to restructure an employee’s work to fit this requirement except as it pertains to Section 10 (A), (B), and (C) below. There is no blanket prohibition on telework for support staff. But, due to the nature of the position, it is important that support staff be in the office. Therefore, support staff only have limited opportunities to telework.

B. The employee must have successfully completed the one (1) year probationary/trial period, although it is recognized that under unusual circumstances exceptions may be approved to permit probationary employees to participate.

C. A non-probationary / non-trial employee who voluntarily transfers to a new Division or Associate Chief Counsel office must have worked four (4) months in the new position, although it is recognized that under unusual circumstances exceptions may be approved to permit employees during this four-month period to participate.

D. An employee must have at least an overall “Fully Successful” (or equivalent) performance appraisal. If the employee has worked for the Office more than twelve (12) months and does not have an appraisal, he or she will be assumed to be “Fully Successful.” If the employee is on a performance improvement plan, he or she is not considered to be “Fully Successful.”

#### E. Discipline and Telework

1. Pursuant to 5 USC § 6502 (Telework Enhancement Act of 2010), an employee may not telework if:

(a) The employee has been officially disciplined for being absent

without permission (for example, AWOL) for more than five (5) days in any calendar year; or

(b) The employee has been officially disciplined for violations of Subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a federal government computer or while performing official federal government duties.

The prohibitions of Subsection 1(a) and 1(b) last as long as the official discipline remains on record for the employee.

2. An employee may not telework for the following number of months after being disciplined:

(a) 12 months for any suspension;

(b) 6 months for any written reprimand; and

(c) 3 months for any written admonishment.

3. An employee may not telework for twelve (12) months after receiving a leave restriction letter.

F. The employee must be accessible at the alternative work site during the employee’s normal tour of duty (except for approved leave / credit hours).

G. The employee must have a telephone, work space suitable to perform work, utilities adequate for installing equipment, and a general work environment that is free from interruptions and provides reasonable security and protection for government property. The costs of these will not be paid by the Office.



- H. All employees who telework must use Office Communicator or Lync.
- I. Equipment requirements: An employee is required to have the following equipment when teleworking Monday through Friday during his or her tour of duty, unless management specifically waives the equipment requirements. An employee requesting to telework outside these hours may also be required to have the following equipment if such equipment is needed for the work to be done on telework. The required equipment is:
  - 1. Office-issued government laptop;
  - 2. Any other Office requirements for remote access to the Office's computer systems (for example, a valid ERAP account or more advanced technology);
  - 3. At the employee's personal expense, broadband or other high-speed internet access available at the alternate work site; and
  - 4. At the employee's personal expense, a telephone (with adequate reception) available at the alternate work site.
- J. While computer access to an employee teleworking is important to making telework effective, it is understood that certain circumstances may warrant management waiving the requirements in Section (2)(I)(1) through I(3). For example, management may waive the equipment requirements when an employee teleworks pursuant to Section 10(C) or for specific discrete projects.

### **Section 3 – Training Requirement**

- A. Pursuant to 5 USC § 6503 (Telework Enhancement Act of 2010), all employees who telework must complete an interactive training program.

- B. Any employee who intends to telework at any time during the life of this Agreement must complete interactive training (specifically tailored to the telework rules of the 2018 Agreement). The Office will make any training required under this Article available no later than the effective date of this Agreement.
- C. Employees who have a Telework Agreement in place on the effective date of this Agreement must complete the training within 60 days after the effective date of this Agreement. Employees who do not complete the on-line training within this time period may not telework until the training is completed.
- D. Employees who did not telework under the 2011 NTEU – Counsel Agreement must complete the interactive training before they are allowed to telework.

### **Section 4 – Telework Limits (Level 1 and Level 2)**

The Office has two levels of telework. An employee who wants to telework must elect one of the following levels:

- A. Level 1 Telework– This level of telework is available for all employees who meet the basic eligibility requirements in Section 2 of this Article. Full-time employees who meet the eligibility requirements can telework as follows:
  - 1. Up to 32 hours per pay period;
  - 2. On either:
    - (a) A project-based telework system where the employee requests telework each time and provides information about the project he or she will work on; or
    - (b) A regularly scheduled basis 1 – 2 days per Monday – Friday work week; or

(c) A combination of project-based and regularly scheduled telework.

3. These limits do not include telework credit hours.
4. These limits do not apply to the situations described in Section 10.
5. If management determines that it is in the Office's best interests, management may extend these limits.
6. A part-time employee electing Level 1 telework can work a prorated amount of telework based upon the number of hours scheduled to be worked by that part-time employee during his or her regular work week, except for situations described in Section 10. For example, a part-time employee whose regular work schedule is 30 hours a week may work up to 24 hours of telework per pay period.

#### B. Level 2 Telework

1. This level of telework is available for all employees who meet the basic eligibility requirements in Section 2 of this Article and the following additional requirements:
  - (a) Work a full-time flexitour with credit hours or a gliding schedule;
  - (b) Occupy an Attorney, Tax Law Specialist, or Paralegal position;
  - (c) Have at least four (4) years of current, relevant experience in the Office of Chief Counsel; and
  - (d) Have a regular telework location within 125 miles of his or her POD.
2. Employees who elect Level 2 telework may work:

- (a) Three (3) days per Monday – Friday work week of regularly scheduled telework; or
- (b) Up to 48 hours of project-based telework per pay period where the employee requests telework each time and provides information about the project he or she will work on; or
- (c) A combination of project-based and regularly scheduled telework.
- (d) These limits do not apply to the situations described in Section 10.
- (e) These limits do not include telework credit hours.

#### 3. Special Rules for Level 2 Telework

- (a) A significant benefit to the Office of telework is savings generated by the release of office space. National Office employees electing Level 2 telework will sit in shared offices in accordance with the Flexiplace Office Sharing MOU dated October 2014. A field employee electing Level 2 telework may be required to give up or share his or her private office under certain situations. If the Office decides that it is necessary to require a field employee working Level 2 telework to give up or share his or her private office, the Office will first give notice to National NTEU and the impacted employees and will, to the extent required by law, do impact and implementation bargaining before there are any space changes.
- (b) Although the employee's regular Level 2 telework location must be within 125 miles of the POD, a supervisor may allow an employee to occasionally work at a more distant telework location in unusual circumstances.

(c) Equipment - The Office will provide the following items to employees who are approved for Level 2 telework:

- i. Upon request, a rolling, lockable briefcase; and
- ii. Upon request and subject to availability from IRS IT, a printer. Any employee who receives a printer for his or her alternate work site will not be provided with a dedicated printer in the office, unless the employee is subject to specific work requirements, such as increased security duties or a reasonable accommodation.

(d) Employees on the Level 2 telework schedule who have three (3) days of regularly scheduled telework per week are expected to report to their physical POD on a regular basis (normally two days a Monday – Friday week).

## **Section 5 – Process for Employees to Request Telework**

- A. Employee participation in the telework program is voluntary. It is the employee's responsibility to request to participate in the program.
- B. In order to telework, an employee must submit to his or her supervisor the Telework Agreement shown in Appendix 48-1 of this Agreement. Any employee who worked flexiplace under the 2011 Counsel – NTEU Agreement must submit a new Telework Agreement as part of the implementation of this Agreement.
- C. The Office has the discretion to approve or disapprove an employee's Telework request based on the standards found in

this Article. Before any such request is rejected, management will discuss this matter with the employee to see if modifications could be made by the employee that would allow the request to be approved. If an employee's Telework request is modified or disapproved, management will provide the employee the reasons for such disapproval or modification in writing.

- D. The Office will approve or disapprove requests promptly.
- E. In the Telework Agreement, the employee must indicate whether they are electing Level 1 or, if qualified, Level 2 telework. The Telework Agreement must also state whether the employee is requesting project-based telework, regularly scheduled telework, or some combination thereof.
- F. The Telework Agreement will also provide the address of the telework location, and a phone number where the employee can be reached. This Telework Agreement will, if management deems it necessary, set rules on how long files can be kept at the telework location.
- G. Once the Office approves a Telework Agreement, the employee and the supervisor will sign the Telework Agreement (see Appendix 48-1).
- H. Telework Agreements have a one year term. After that time, Telework Agreements are subject to renewal or modification with management approval.
- I. The parties understand that requests initially approved may subsequently be rescinded or modified based on the standards set forth in Section 6.
- J. Additional "Project-Based Telework" Specific Rules

1. The employee must seek and obtain approval to work at an alternate work site in advance by either e-mail or other mutually acceptable medium. The employee must identify or describe the work anticipated to be performed, the number of telework hours requested, the location, and the phone number where the employee can be reached while teleworking (other than the Softphone) in case there are technical difficulties.
2. Before the beginning of a month, employees may submit a request to telework on specified dates during that month.

**K. Additional "Regularly Scheduled Telework" Specific Rules**

If regularly scheduled, the employee must identify the specific designated days of the week (and hours) he or she wants to telework. The requested days must not conflict with employee's general duties (for example, a Procedure and Administration attorney who regularly attends the Tax Court motion session on Wednesdays could not work regularly scheduled telework on Wednesdays).

**Section 6 – Management Rights and Responsibilities Regarding Telework**

- A. The Office will consider the following factors in order to make a reasonable decision about whether to permit an employee to telework:

1. The work must be portable;
2. The progress on the work performed is capable of being verified as appropriate for the amount of time to be worked at the alternate work site;
3. The employee's office must have adequate coverage, as determined by management, at the traditional

work site. The Office will be reasonable in making this determination and will not make blanket determinations to exclude an office from participation;

4. The employee must have the appropriate equipment for telework;
  5. The Office may deny or limit telework based on the amount of material which must be protected, the sensitivity of the information, the method of transit, the work facilities and storage at the alternate site, and the degree of security risks to the Office or IRS;
  6. The office work schedule must be considered, including the employee's particular work duties and priorities for the day telework is requested (e.g., for attorneys, paralegals and support employees working on Tax Court calendar cases, telework is generally not appropriate in the week before a trial calendar);
  7. The impact on the office because of the number of consecutive days the employee will be out of the office (e.g., when an employee's schedule combining requested telework with leave, training or other out-of-office time results in an extended absence);
  8. The impact of granting telework on the work of others (including managers) in the office (e.g., the impact of support staff being out of the office when attorneys need them for on-site work);
  9. When appropriate, other ad hoc factors to be considered (e.g., branch or group meetings, specific needs for employee expertise, etc.).
- B. Management has the right to verify that the appropriate amount of work was

completed during an employee's telework hours. Management can require reasonable verification through a variety of means, including but not limited to:

1. Requiring the employee to provide the written work at the end of the telework day/period;
2. Requiring the employee to provide a brief written explanation of the work done during the telework day/period upon their return to their regular work site;
3. Discussing the work performed with the employee; and
4. Requiring the employee to verify the amount of hours that were worked while on telework.

However, verifiable does not mean that all employees must routinely submit work (which is not otherwise ready for review) to their supervisors for verification of completion when they return to their regular work site. Management verification under this provision shall not be intended to discourage an employee's use of telework.

- C. Management has the discretion to determine when files and other Office materials and equipment must be returned to the office. When possible, management shall provide the affected employee(s) with reasonable advance notice.
- D. Due to the variable nature of legal work, a regularly scheduled telework day, or days, may be cancelled. Similarly, a previously approved project-based telework day may be cancelled. If an employee's telework day is cancelled, he or she may substitute, with management approval, another day or

days and telework in that same week or in the following two week period.

- E. Supervisors may designate days when no telework may be worked during core hours. Supervisors will designate no more than one recurring "no telework" day per week.

### **Section 7 – General "Day to Day" Rules for Telework Use**

- A. Accessibility (telephone and e-mail) while on telework

1. The employee working at the alternate work site must be accessible, as defined below, during the employee's normal tour of duty (except for approved leave/credit hours) to the same extent the employee would be available if he or she were in the office.
2. "Accessible" means that the employee must be available by phone, by Lync, and by e-mail via a Counsel-issued laptop unless the supervisor has specifically allowed an employee to not use a computer. Employees on telework will not leave "out of office" messages on voice mail, e-mail, or in the OUTLOOK calendar referring callers to someone else in the office
3. Unless exempted from having a computer, employees who telework during regular work hours are expected to check e-mails frequently (approximately every two hours) and respond as appropriate.
4. Employees must leave a phone number with their supervisor and office secretary where they can be reached at the alternate work site.
5. Employees must check their phone messages frequently (approximately

every two hours) and respond as appropriate.

6. In the event an employee experiences equipment or service problems while teleworking during work hours, the employee must contact his or her supervisor to determine whether the employee: (a) may continue teleworking without the required equipment, or (b) must take leave or return to the office to finish his or her tour of duty. If the employee is directed to return to the office to finish his or her tour of duty, it shall be treated as a recall and the provisions of Subsection 7(D) shall apply. Decisions on whether the employee may take leave under these circumstances will be made in a reasonable manner, taking into consideration the timing of the problem in relation to the employee's tour of duty. If the employee has attempted to contact the supervisor and has sufficient work, the employee may continue teleworking unless otherwise instructed.

#### B. Leave and Tours of Duty

1. Employees will be permitted to work at telework sites full days or a portion of a day. Unless prior approval is given from a supervisor, an employee is expected to work their regular tour of duty including core hours while teleworking.
2. Employees will inform the supervisor if they are unable to perform work during a time when they were scheduled to telework due to illness or personal problems during the telework tour of duty and request appropriate leave. Such leave requests will be approved / disapproved under the standards of Articles 9 and 10.

3. An employee may (with management approval) move or change a regularly scheduled telework day or a previously approved project-based telework day. This can be done so long as the change is within the same pay period.
4. Employees working at alternate work sites must comply with all established procedures for requesting approval for and taking leave.
5. Credit hours may be worked at a telework location (subject to maximums set forth in Article 5) and may be worked non-contiguously to the employee's regular work schedule. For example, an employee may work at the regular work site between 7:30 a.m. and 4 p.m. and return home and work 2 credit hours between 8 p.m. and 10 p.m. The hours from 8 p.m. to 10 p.m. would be telework credit hours and would have to be approved in advance by management and follow all relevant rules in this Article.
6. An employee may work repaid/prepaid religious compensatory time under Article 5 (Work Schedules) at an alternate work site.

#### C. Child / Dependent care

Telework is not intended to serve as a substitute for child /dependent care or other care giving responsibilities.

#### D. Recall to the Office

Management has the right to direct employees to report to the office (POD) due to special circumstances, e.g., work assignments, meetings, Tax Court case issues, or details to other duties. When the Office recalls an employee, the



approval to telework for the relevant time period is denied effective as of the time of the recall and the employee must report to his or her office as soon as practicable. If possible, the recall should be planned to give the employee sufficient notice and time to travel to the office site during his or her regular commute time. If the employee receives notice of the recall and must report to the office on that same day, any time spent traveling during duty hours to the office will be considered regular work hours. Failure to return to the office when recalled may be cause for discipline.

**E. Employee Legal Rights Relating To Telework**

1. Employee coverage for work-related injuries or illnesses sustained or occurring at the alternate work site will be controlled by the Federal Worker's Compensation Act.
2. Nothing in this Article diminishes an employee's Fair Labor Standard Act rights or any other rights provided by statute and/or regulation.

**F. Telework Reporting**

Employees shall report all telework hours in the system designated by management (for example, in the SETR timekeeping system or its successor).

**Section 8 – Telework and Security of Computer Equipment and Paper Files**

- A. Employees must protect all government records and data against unauthorized disclosure, access, and destruction. Employees must comply with all required security measures and disclosure provisions, including password protection and data encryption so that at no time are the security, disclosure, or privacy

requirements of the Office compromised.

- B. When an employee requires CUI (controlled but unclassified information) at an alternate work site in order to telework, the employee must take reasonable steps to protect the information in transit and at the alternate work site. Files and other information must be secured in a way that renders these records and data inaccessible to anyone other than the employee. If an employee's alternate work site is his or her home, this means within the employee's home the files/computer must be secured from others who live or visit the home via a locked door to the room where the employee keeps the files, or via a locking briefcase / file cabinet / other container.
- C. Employees must ensure that government provided equipment / property is used only for authorized purposes.
- D. Due to security standards, employees may not store, access, process or transmit CUI over personally-owned IT equipment. Because research search terms may disclose personally identifying information, trial or audit strategy, or other CUI, research should generally be done only on government equipment.

**Section 9 – Telework Restrictions**

- A. Because telework is not an entitlement, an employee may be prohibited from teleworking if the Office has reasonable grounds to question the employee's proper use of telework. This Section outlines the steps involved in restricting future telework available to an employee.
- B. Employees may be prohibited from working telework if:

1. Management has more difficulty reaching the employee working telework by phone than management would have if the employee was in the office;
  2. Management reviews the work performed by an employee on telework and determines that the employee's work is inadequate or inappropriate for the amount of time worked at the alternate work site (i.e., the employee performs less work when on telework than when in the office for the same amount of time);
  3. An employee does not (after management's specific request) provide management with adequate verification of the work performed while on telework;
  4. Management has been put on notice of a specific credible concern about the employee being unresponsive while working telework;
  5. The employee teleworks before receiving approval to do so or teleworks in excess of the pay period limits;
  6. There is a decline in employee's quality or quantity of work that is reasonably attributable to the fact that the employee is teleworking; or
  7. The employee violates any of the other rules regarding telework set forth in this Article.
- C. If the Office determines that one or more of the problems outlined above exist, the Office will first discuss this matter with the employee. Absent a reasonably acceptable explanation, the employee will be counseled on the telework rules and placed on notice in writing that continued determinations by management about problems with the employee's use of telework may result in a restriction of future telework for a period of time not to exceed one year.
- D. If future problems occur after the counseling mentioned in Subsection C above, the Office may notify the employee in writing that for a stated period of time (not to exceed one year) no request for telework will be approved. This notice will describe the circumstances that led to its issuance.

## **Section 10 – Hardship and/or Emergency Situations**

### **A. Physical Incapacity**

1. This Subsection applies to those situations in which the presence of a temporary physical illness/injury or other medical condition significantly impairs the mobility of the employee. In this situation, the employee's physical condition prevents him or her from reporting to the traditional work site, or the condition imposes such a significant adverse impact on the employee's travel time that the routine use of leave (including leave without pay) would be necessitated.
2. Employee(s) approved to work at an alternate work site due to physical incapacitation may initially be granted up to three (3) months of such accommodation, depending on the severity of the hardship and the presentation of administratively acceptable medical documentation. Extensions, in up to three (3) month increments, may be granted for an additional six (6) months.
3. The authorization to work at an alternate work site due to physical incapacitation is intended to serve only as a temporary accommodation pending the employee's recovery from a temporary ailment.

B. Persons with Disabilities

Employees with disabilities under the Rehabilitation Act of 1973, as amended, may be entitled to reasonable accommodation which may include working at an alternate work site. Telework arrangements reached pursuant to the Rehabilitation Act may be more expansive (i.e., not subject to day/hour or equipment restrictions) than those contained within this Article.

C. Inclement Weather / Short-Term Physical Emergencies / “Unscheduled Telework”

This Subsection applies to those situations in which the temporary presence of adverse weather or commuting conditions prevent the employee from reporting to the traditional work site. In these situations, the office officially remains open but the Office of Personnel Management (or other authority outside of Washington), has announced that liberal leave, unscheduled leave, “unscheduled telework” or a similar policy is in effect for the POD.

1. Employees affected by these conditions or emergencies may work at an alternate work site if the employee is eligible for telework under the terms of this Article and the employee has sufficient work in his or her possession that is consistent with the terms of this Article. Employees may obtain conditional approval from management in anticipation of the events described in this Subsection. Management will not consider the adequate coverage requirement of Section 6(A)(3), or unless specifically required by the work to be performed while on telework, the equipment requirements of Section 2(I) in deciding whether to allow telework in these situations.

2. The unscheduled telework under this Subsection will only count towards the telework time limits in Section 4 when the unscheduled telework coincides with either: an employee's regularly scheduled telework day, a pre-scheduled project-based telework day under Section 4, or telework that was conditionally approved under Section 10(C)(1). For example, if a National Office employee had received conditional approval to work Tuesday project-based telework in advance of a possible snowstorm and OPM later announces “unscheduled telework” on Tuesday and Wednesday, the Tuesday telework counts towards the pay period limits (but any telework worked on Wednesday does not).
3. The Office, at the employee's request, will assist in identifying “portable work” that may be done by support staff in “unscheduled telework” situations like inclement weather or unusual commuting situations that impact one particular POD for a limited number of days. It is the support employee's responsibility to request telework and then suggest projects that may be suitable. Such work may be for all or part of a work day.

D. Telework When POD is Closed

1. Employees who telework will not receive administrative leave on a day when their assigned office/POD is closed, except as provided in this Section.
2. The early departure administrative leave rules in Article 12 apply to teleworkers who physically reported to the POD prior to the POD closing.
3. When an emergency condition forces the closure of a POD and

employees working in that facility are granted administrative leave, an employee who was previously scheduled to telework on that day must continue working and will not receive administrative leave.

4. A teleworker who was not previously scheduled to telework on a day when the POD is closed is expected to either telework or take leave.

- (a) This provision applies assuming that the teleworker has equipment (if needed) and/or work.

- (b) Teleworkers who do not have sufficient work to fill their full tour of duty will be granted administrative leave for the remainder of the day.

- (c) This provision does not apply to support staff (such as employees in the GS-318 and GS-986 series) due to the nature of their position.

5. The Office may direct teleworkers to take their laptops and all appropriate work materials home in advance of a possible office/POD closing. If the Office does so, it will provide advance notice. If a teleworker did not receive the advance notice because the employee was not present at work and the teleworker did not have adequate work or equipment when the POD was closed, that employee will be provided an appropriate amount of administrative leave.

6. However, if any employee is prevented from accomplishing work because of that same emergency condition that affected the POD (for example, where a power outage forces closure of an office, and that same power outage prevents a

teleworker from completing his or her work assignments at home), that teleworker will be provided the same amount of administrative leave granted employees who were working in the closed facility. A teleworker claiming administrative leave under this provision may be responsible for providing appropriate documentation in support of that claim.

7. In unusual circumstances where the building is closed for more than one (1) business day due to a building emergency, the Office may order a teleworker to return to the building to retrieve necessary equipment and appropriate work materials so that employees can telework during the emergency if the following conditions are met:

- (a) Appropriate authorities (e.g., GSA, the fire marshal, law enforcement) have determined that conditions are safe for employees to temporarily enter;

- (b) Notice is given to impacted bargaining unit employees and, as applicable, to the Chapter 251 President or applicable stewards in the field; and

- (c) The Office will make arrangements to assist employees as needed, including retrieving work materials.

#### E. Emergency Preparedness

Employees are required to provide emergency contact information to the Office. This information should generally include contacts both in and out of the area in which the employee lives, if available, and may include an employee's personal cell number. This information will be entered into HR Connect (or its successor). The

purpose of the emergency contact information is to enable the Office to contact the employee, or if the employee is unavailable, to contact someone else who may be able to contact the employee. Within ninety (90) days after the effective date of this Agreement, the Office will remind employees of this obligation. Thereafter, employees will be required to verify their information on a yearly basis and will be encouraged to make updates as their information changes. The Office will ensure that all information entered into HR Connect (or its successor) in relation to this provision is restricted to the appropriate management officials who have a need to know.

## **ARTICLE 49 - STUDENT LOAN REPAYMENTS**

### **Section 1**

- A. The parties agree that student loan repayments may have value for targeted recruitment and retention. The parties acknowledge, however, that student loan repayments will not begin until the IRS is available to administer them. The Office shall provide NTEU notice when IRS is available to administer such payments and thereafter when the Office commences making student loan repayments under this Article.
- B. Once repayments begin, the Office shall annually provide NTEU with an electronic report detailing the Office's previous fiscal year disbursements of student loan monies. This electronic report shall provide the following information, when reported to the Office by the administrator: the employee occupation or series, and total dollar amount of the student loan repayment.
- C. There is no entitlement to receive student loan repayments. Repayment of student loans by the Office is subject

to budgetary considerations and is at the Office's discretion. The Office retains sole and exclusive discretion to make all decisions about student loan repayments including the recipients and amounts. The Office intends to use this authority for targeted recruitment and retention purposes rather than for broad employment categories.

### **Section 2**

- A. The following parameters will apply to any student loan repayments by the Office:
  1. Repayments will be made consistent with 5 U.S.C. § 5379 and 5 CFR Part 537;
  2. As a condition of receiving repayments, employees will sign service agreements; and
  3. When selecting employees to receive loan repayment benefits, the Office will ensure that benefits are awarded without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, disabling condition, or sexual orientation.
- B. The Office will keep a record of each determination to provide student loan repayment benefits.

## **ARTICLE 50 – RECRUITMENT, RELOCATION AND RETENTION INCENTIVES**

### **Section 1**

- A. In conjunction with the implementation of the 2011 Counsel - NTEU Agreement, the Office has amended CCDM 30.4.1.15 - Recruitment, Relocation, or Retention Incentives to include bargaining unit employees.



- B. Both the Office and NTEU understand that no recruitment, relocation or retention incentives have been provided to bargaining unit employees in the past and the Office has no current intention to do so in the near future.
- C. But, if the Office decides to provide any such incentives to bargaining unit employees during the life of this Agreement, the Office will provide NTEU with thirty (30) days advance notice before instituting any such policy.

## **ARTICLE 51 - RULES OF CONDUCT**

### **Section 1**

The Standards of Conduct for Employees of the Executive Branch (5 CFR Part 2635 including any amendments thereto), the Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury (5 CFR Part 3101), and the Treasury Employee Rules of Conduct (31 CFR Part 0) will apply to all employees.

### **Section 2**

The Office will annually notify all employees which rules of conduct apply to them. Employees who have written questions concerning an interpretation or application of the rules of conduct should direct such questions to their supervisors. Answers to written questions will be provided in writing.

## **ARTICLE 52 - EMPLOYEE TAX COMPLIANCE**

### **Section 1**

- A. Each Counsel employee has a personal responsibility to fully meet his or her tax obligations and to do so in a manner reflecting favorably on organizational integrity. Complying with the tax laws means timely and accurately filed returns and timely payment of taxes. This is the same definition that applies to all taxpayers, not just Counsel

employees. The Office of Government Ethics Regulations at 5 CFR § 2635.101(b)(12) and 2635.809 state that employees are to "...satisfy in good faith their obligations as citizens including all just financial obligations, especially those such as Federal, State or local taxes that are imposed by law..."

- B. Counsel employees retain all their rights as taxpayers under the Internal Revenue Code and IRS guidance, including the right to request extensions of time to file, the right to pay taxes in installments, the right to contest liabilities proposed by the Government, and requirements regarding the retention of tax records. In exercising these rights, employees must follow all applicable rules under the Internal Revenue Code (IRC). Notwithstanding the rights articulated herein, employees may be subject to discipline for failure to follow the tax rules when exercising these rights.

### **Section 2**

It is the Office's current practice to screen employee tax compliance matters through the IRS ETC Cincinnati Branch. Cases screened through the IRS ETC Cincinnati Branch will be screened following whatever processes and procedures are in place for the IRS ETC Cincinnati Branch at the time that the cases are screened. The June 28, 2002 Agreement between IRS and NTEU on this subject (and any subsequent agreements) will be posted on the Office's intranet site. When the IRS ETC Unit screening process does not result in case closures, the cases will be referred to the Office for action.

### **Section 3**

Employees and/or their NTEU representatives may use the Office's telephone systems to contact the IRS ETC Unit to discuss their particular cases.



#### **Section 4**

When Counsel employees receive contact letters alleging noncompliance from the IRS ETC Unit, employees will be provided a reasonable amount of official time to respond. Official time to respond to contact letters and prepare for meetings related to complex cases should normally not exceed six (6) hours. In these instances, the employees may request NTEU assistance, which will be allowed per provisions of Article 39 (NTEU Representatives and Official Time). When requesting use of official time, employees will indicate they need official time related to an official inquiry, and they will not be required to show the Office copies of any transmittals or letters received.

#### **Section 5**

If the IRS ETC Cincinnati screening process does not resolve a case and the case is referred to the Office, employees will be informed in writing at the time that the referral is made. At that time, employees will be provided with a copy of any tax transcripts and transcript summaries provided to the Office.

#### **Section 6**

Employees who are contacted by the IRS ETC Unit regarding alleged noncompliance will be allowed the amount of time referenced within the procedures discussed in Section 2, above, to respond to the contact letter.

#### **Section 7**

Meetings between the Office and employees for the purpose of developing information or discussing possible disciplinary action related to an employee's tax compliance matters are investigatory interviews. Therefore, the Office will follow the provisions of Article 4 (Employee Rights) concerning any such meetings.

### **ARTICLE 53 – BAR DUES AND TAX COURT ADMISSION**

#### **Section 1**

- A. The Office will reimburse bar dues for employees who are in a GS-905 series. The reimbursement will be for one bar only and will be limited to \$300 per year per employee.
- B. In any fiscal year where: (1) the Office provides notice under Article 47, Section 5 to the Union that it intends to furlough employees, or (2) OPM or OMB issues guidance directing agencies not to pay awards and the Office cancels awards for bargaining unit employees and non-bargaining unit employees, the Office will have no obligation to reimburse bar dues during that same fiscal year. But if the Office later decides to pay those awards, it will also reimburse employees for the bar dues for the year that was cancelled.

#### **Section 2**

When directed to do so by the Office, attorneys may be required to be admitted to U.S. Tax Court. Any employee who is so directed by the Office during the term of this Agreement will be reimbursed for the cost of the one-time Tax Court admission fee.

### **ARTICLE 54 – EFFECTIVE DATE AND DURATION**

#### **Section 1 – Full and Complete Agreement**

This is the full and complete Agreement between the parties concerning the matters addressed herein.

#### **Section 2 – Mid-Term Agreements and Practices**

- A. Mid-Term Agreements – As a part of the negotiation process for this master collective bargaining agreement, the

Office and NTEU have reviewed all mid-term agreements entered into after the 2011 Agreement.

All mid-term agreements in effect upon the effective date of this Agreement that are not expressly listed in Appendix 54-1 shall terminate upon the effective date of this Agreement. The mid-term agreements listed on Appendix 54-1 shall also be posted along with this Agreement by Counsel on its intranet.

- B. Practices – All past practices not in conflict with this Agreement or law and regulation will continue during the duration of this Agreement.

### **Section 3 – Ratification, Agency Head Review and Term**

- A. After tentative agreement, NTEU retains the right to seek ratification. NTEU will inform the Office of the results of the ratification process promptly after the ratification vote.
- B. Once NTEU has confirmed that ratification has occurred, the Agreement will be promptly and formally executed, signed and submitted for agency head review. The Office agrees to inform NTEU of the results of agency head review as soon as possible.
- C. This Agreement will become effective within thirty-one (31) days of the parties' signatures or agency head approval, whichever occurs first. However, the parties have agreed to implement this Agreement on January 31, 2018. The Agreement will remain in full force and effect for four (4) years with no mid-term re-opener.
- D. Thereafter, it will remain in effect for yearly periods unless either party serves the other party with written notice, during the anniversary month that the contract first

went into effect or each yearly interval after, of its intent to negotiate a successor term Agreement. The terms and conditions of this Agreement will continue to apply until a successor agreement is implemented.

- E. Within thirty (30) days of the issuance of any notice of intent to negotiate a successor to this Agreement, the party issuing such notice will serve initial ground rules proposals on the other party to commence ground rules negotiations over a successor agreement. The other party will submit counter-proposals within thirty (30) days of receipt of initial ground rules proposals.

### **Section 4 – Waiver**

- A. Nothing in this Agreement shall serve as a waiver by either party of the right to negotiate over matters that are affected by a change (during the life of this Agreement) to the Federal Service Labor-Management Relations Statute that expands or contracts the scope of bargaining in the federal sector.
- B. Such bargaining may be initiated at any time after sixty (60) days from the effective date of the statutory change.

## Appendix 4-1

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### Statements of Rights and Obligations

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Before **we** ask you any questions, it is my obligation to inform you of the following:

"You are here to be asked questions pertaining to your employment with the Internal Revenue Service and the duties that you perform for the IRS. You have the option to remain silent, although you may be subject to removal from your employment by the Service if you fail to answer material and relevant questions relating to the performance of your duties as an employee. You are further advised that the answers you may give to the questions propounded to you at this interview, or any information or evidence which is gained by reason of your answers, may not be used against you in a criminal proceeding except that you may be subject to a criminal prosecution for any false answer that you may give."

---

#### Receipt By Employee

I have been given the above statement of rights and obligations at the beginning of the interview held on \_\_\_\_\_ .

---

Signature of employee

Date

## Appendix 4-2

### STATEMENT OF BASIC CHIEF COUNSEL EMPLOYEE RIGHTS

The National Treasury Employees Union (NTEU) and the Office of Chief Counsel, Internal Revenue Service, recognize that the right of employees to participate through NTEU in decisions that affect them safeguards the public interest and contributes to the effective conduct of public business, and agree that all Chief Counsel employees are entitled to the following:

- To be treated with dignity, courtesy and tact;
- To work in a safe and healthy working environment;
- To work in an environment free of any form of prohibited discrimination;
- To be encouraged and assisted in pursuing a course of self-development;
- To receive an explanation of job expectations;
- To expect appropriate assistance in the performance of their job duties;
- To a performance awards program which is fair and objective and based on employee achievement;
- To use annual, sick, administrative and parental leave as provided for in the contract;
- To be free to seek redress of grievances through applicable grievance and appeal procedures.

## Appendix 10-1 Sick Leave Chart

Sick leave and FMLA leave are authorized under two separate sets of statutes, each with different entitlements and conditions, such as the categories of individuals for whom an employee may take leave to care, number of hours or weeks of leave allowed, and the rules on the substitution of paid leave for unpaid leave. An employee is entitled to use 13 days (104 hours) of sick leave for general family care and bereavement in accordance with 5 CFR 630.401(a)(3)(i) and (4), and 12 weeks of sick leave to care for a family member with a serious health condition in accordance with 5 CFR 630.401(a)(3)(ii). The basic 12-week FMLA entitlement to care for a family member with a serious health condition is found at 5 U.S.C. 6382(a)(1)(C) and 5 CFR 630.1203(a)(3), and the 26-week FMLA entitlement to care for a covered servicemember is found at 5 U.S.C. 6382(a)(3).

Table 1 outlines the various sick leave and FMLA flexibilities available to an employee for purposes of caring for a family member and/or for a covered servicemember. To know which leave options are available, an employee must first determine the type of leave to which he or she is entitled based on the person for whom the leave is being taken. Table 1 provides useful information to help agencies and/or employees determine appropriate leave options.

| Table 1—Leave Flexibilities Available To Care for a Family Member and/or a Covered Servicemember  |  |  |
|---|--|--|
| Entitlement   | Amount and purpose   | Individuals for whom leave may be taken  |
| Sick Leave for General Family Care and Bereavement (5 U.S.C. 6307(d)(2)-(3); 5 CFR 630.401(a)(3)(i); 5 CFR 630.401(a)(4); 5 CFR 630.401(b)) | 13 days (104 hours) per leave year to: <ul style="list-style-type: none"> <li>• Provide care for a family member who is incapacitated by a medical or mental condition;</li> <li>• Attend to a family member receiving medical, dental, or optical examination or treatment; or</li> <li>• Make arrangements necessitated by the death of a family member or attend the funeral of a family member.</li> </ul> | May be taken for a family member.* “Family member” means the following relatives of the employee: <ol style="list-style-type: none"> <li>(1) Spouse, and parents thereof;</li> <li>(2) Sons and daughters, and spouses thereof;</li> <li>(3) Parents, and spouses thereof;</li> <li>(4) Brothers and sisters, and spouses thereof;</li> <li>(5) Grandparents and grandchildren, and spouses thereof;</li> <li>(6) Domestic partner and parents thereof, including domestic partners of any individual in (2) through (5) above; and</li> <li>(7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.</li> </ol> (See 5 U.S.C. 6307(d)(1); 5 CFR 630.201(b)). |
| Sick Leave for Serious Health Condition of Family Member (5 U.S.C. 6307(d)(2)(A); 5 CFR 630.401(a)(3)(ii); 5 CFR 630.401(c))                | 12 weeks (480 hours) per leave year to care for a family member with a serious health condition.   | Same as those listed above. (See 5 U.S.C. 6307(d)(1); 5 CFR 630.201(b)).   |
| Advanced Sick Leave (5 U.S.C. 6307(d); 5 CFR 630.402(a)(1))   | Up to 30 days (240 hours) of paid sick leave to care for a family member with a serious disability or ailment. (Agency discretion.)  | Same as those listed above. (See 5 U.S.C. 6307(d)(1); 5 CFR 630.201(b)).   |
| FMLA (Basic) to care for spouse, son, daughter, or parent with a serious health condition (5 U.S.C. 6382(a)(1)(C); 5 CFR 630.1203(a)(3))    | 12 weeks (480 hours) of unpaid leave during any 12-month period to care for a spouse, son, daughter, or parent with a serious health condition.  | For the care of a spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition. (See 5 U.S.C. 6382(a)(1)(C); 5 CFR 630.1203(a)(3)).<br>(Note: Son or daughter must be under 18, or over 18 but incapable of self-care because of a mental or physical disability. (See 5 U.S.C. 6381(6) and 5 CFR 630.1202).)   |

|  |   |   |
|--|---|---|
| FMLA to care for a covered servicemember (5 U.S.C. 6382(a)(3))               | 26 weeks (1,040 hours) of unpaid leave during a single 12-month period to care for a covered servicemember with a serious injury or illness.  | Available to an employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember. (See 5 U.S.C. 6382(a)(3).)<br>Next of kin means the nearest blood relative of that individual. (See 5 U.S.C. 6381(10)). |
| Explanatory Information  |   |   |
| 1. Leave To Care for Different Individuals Varies by Entitlement             | An employee may take leave to care for different individuals, depending on the applicable entitlement. For example, the definition of family member under the sick leave regulations is very broad and includes many more categories of individuals than the nuclear family. In contrast, the FMLA statute and regulations do not use the term “family member” at all; rather they specify specific individuals for whose care an employee may take FMLA leave. The individuals for whom an employee may take FMLA leave to provide care are slightly different depending on whether the leave is the basic 12-week entitlement for the eligible relatives shown in the second-to-last entry above, or the 26- week entitlement to care for a covered servicemember, as shown in the last entry above.  |   |
| 2. Sick Leave  | Under 5 U.S.C. 6307, an employee accrues 4 hours of paid sick leave per full biweekly pay period that may be accumulated without limitation. An employee has an entitlement to use his or her accumulated sick leave for self, family care or bereavement, and care of a family member with a serious health condition. No more than a combined total of 12 weeks of sick leave may be used by a full-time employee on a regular tour of duty for general family care, bereavement, or care of a family member with a serious health condition within a leave year. (See 5 CFR 630.401(c)). Because sick leave is a separate entitlement, an employee does not need to invoke FMLA to use the sick leave entitlement for general family care. Under 5 U.S.C. 6307(d), sick leave may be advanced up to 30 days for a serious disability or ailment, including for care of a family member with a serious disability or ailment. The advancement of sick leave is at the agency's sole discretion, based upon the exigencies of the situation.   |   |
| 3. Basic FMLA Leave (12 Weeks of Unpaid Leave)                               | The Family and Medical Leave Act (FMLA) provisions are found at 5 U.S.C. 6381-6387 and provide a total of either 12 or 26 weeks of unpaid leave, as well as permit an employee to elect to substitute annual leave and/or sick leave, as appropriate, for the unpaid leave. Under the 12-week basic FMLA entitlement (for the birth of a son or daughter of the employee and in order to care for such son or daughter; for the placement of a son or daughter with the employee for adoption or foster care; for the employee to care for his or her spouse, son, daughter, or parent with a serious health condition; for a serious health condition that makes the employee unable to perform the functions of his or her position; for a qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on covered active duty or has been notified of an impending call or order to covered active duty in the Armed Forces), an employee can substitute annual or sick leave consistent with the laws and regulations for using annual and sick leave. Therefore, the employee can substitute only as much accumulated and accrued sick leave so that the cumulative amount of sick leave usage does not exceed 12 weeks of sick leave in a leave year. (See 5 CFR 630.401(b)). |   |
| 4. FMLA Leave To Care for a Covered Servicemember (26 Weeks of Unpaid Leave) | In contrast to basic FMLA leave, there are no limitations on the amount of sick leave that may be substituted for unpaid FMLA leave to care for a covered servicemember, since the FMLA statute at 5 U.S.C. 6382(d) states that an employee may substitute “any of the employee's accrued or accumulated annual or sick leave” for any part of the 26- week period of unpaid FMLA leave. Since the statute provides the authority to substitute any of the employee's accrued or accumulated sick leave for any part of the 26-week period of unpaid FMLA leave, there are no limits to the amount of sick leave that can be substituted for unpaid FMLA leave to care for a covered servicemember.   |   |



## **Appendix 11-1**

Please see the following pages for Appendix 11-1, the FMLA Application Form and Certification of Health Care Provider.

# Application for Leave Under the Family and Medical Leave Act

|  |                           |
|--|---------------------------|
| 1. Name (Please print - first, last, mi) | 2. Social Security Number |
|--|---------------------------|

3. Position (Title, Series, Grade)

4. Purpose of Leave (Check appropriate category):

- a. ☐ Birth of a son or daughter and care of such child. (5 CFR 630.1230a(1))
- b. ☐ Placement of son or daughter with you for adoption or foster care. (5 CFR 630.1230a(2))
- c. ☐ Care of your spouse, son, daughter, or parent who has a serious health condition. (5 CFR 630.1230a(3))
- d. ☐ A personal serious health condition which prohibits you from performing the essential functions of your position. (5 CFR 630.1230a(4))

|                              |                            |
|------------------------------|----------------------------|
| 5. Anticipated starting date | 6. Anticipated Ending Date |
|------------------------------|----------------------------|

7. Please indicate below the total number of hours of each type of leave you anticipate needing for the current condition/event.

|                        |                          |                               |
|------------------------|--------------------------|-------------------------------|
| a. Hours of sick leave | b. Hours of annual leave | c. Hours of leave without pay |
|------------------------|--------------------------|-------------------------------|

8. If leave is for a medical condition, is medical certification included with application?

☐ Yes ☐ No

9. Additional information relevant to your application. (if applicable)

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|  |

## APPROVED

## DISAPPROVED

|  |                |   |      |
|--|----------------|---|------|
| 10. Name   |                | 14. Name  |      |
| 11. Title  | Date           | 15. Title   | Date |
| 12. Dates of FMLA  |                | 16. Justification for denial of FMLA  |      |
| a. Beginning Date:   | b. Ending Date | a. <input type="checkbox"/> No entitlement.   |      |
|  |                | b. <input type="checkbox"/> Entitlement used for current 12 month period.                     |      |
| 13. <input type="checkbox"/> Provisionally approved pending medical certification. |                | c. <input type="checkbox"/> Unacceptable final medical certification. (Based on third option) |      |

Certification of Health Care Provider for  
Employee's Serious Health Condition  
(Family and Medical Leave Act)

U.S. Department of Labor  
Wage and Hour Division



DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT

OMB Control Number: 1235-0003  
Expires: 5/31/2018

**SECTION I: For Completion by the EMPLOYER**

**INSTRUCTIONS to the EMPLOYER:** The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

Employer name and contact: \_\_\_\_\_

Employee's job title: \_\_\_\_\_ Regular work schedule: \_\_\_\_\_

Employee's essential job functions: \_\_\_\_\_

Check if job description is attached: \_\_\_\_\_

**SECTION II: For Completion by the EMPLOYEE**

**INSTRUCTIONS to the EMPLOYEE:** Please complete Section II before giving this form to your medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to your own serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 29 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form. 29 C.F.R. § 825.305(b).

Your name: \_\_\_\_\_  
First Middle Last

**SECTION III: For Completion by the HEALTH CARE PROVIDER**

**INSTRUCTIONS to the HEALTH CARE PROVIDER:** Your patient has requested leave under the FMLA. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), genetic services, as defined in 29 C.F.R. § 1635.3(e), or the manifestation of disease or disorder in the employee's family members, 29 C.F.R. § 1635.3(b). Please be sure to sign the form on the last page.

Provider's name and business address: \_\_\_\_\_

Type of practice / Medical specialty: \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_\_) \_\_\_\_\_

**PART A: MEDICAL FACTS**

1. Approximate date condition commenced: \_\_\_\_\_

Probable duration of condition: \_\_\_\_\_

**Mark below as applicable:**

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?

☐ No ☐ Yes. If so, dates of admission:

\_\_\_\_\_

Date(s) you treated the patient for condition:

\_\_\_\_\_

Will the patient need to have treatment visits at least twice per year due to the condition? ☐ No ☐ Yes.

Was medication, other than over-the-counter medication, prescribed? ☐ No ☐ Yes.

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?

☐ No ☐ Yes. If so, state the nature of such treatments and expected duration of treatment:

\_\_\_\_\_

2. Is the medical condition pregnancy? ☐ No ☐ Yes. If so, expected delivery date: \_\_\_\_\_

3. Use the information provided by the employer in Section I to answer this question. If the employer fails to provide a list of the employee's essential functions or a job description, answer these questions based upon the employee's own description of his/her job functions.

Is the employee unable to perform any of his/her job functions due to the condition: ☐ No ☐ Yes.

If so, identify the job functions the employee is unable to perform:

\_\_\_\_\_

4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**PART B: AMOUNT OF LEAVE NEEDED**

5. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery? ☐ No ☐ Yes.

If so, estimate the beginning and ending dates for the period of incapacity: \_\_\_\_\_

6. Will the employee need to attend follow-up treatment appointments or work part-time or on a reduced schedule because of the employee's medical condition? ☐ No ☐ Yes.

If so, are the treatments or the reduced number of hours of work medically necessary?  
☐ No ☐ Yes.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

\_\_\_\_\_

Estimate the part-time or reduced work schedule the employee needs, if any:

\_\_\_\_\_ hour(s) per day; \_\_\_\_\_ days per week from \_\_\_\_\_ through \_\_\_\_\_

7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions? ☐ No ☐ Yes.

Is it medically necessary for the employee to be absent from work during the flare-ups?  
☐ No ☐ Yes. If so, explain:

\_\_\_\_\_

\_\_\_\_\_

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency : \_\_\_\_\_ times per \_\_\_\_\_ week(s) \_\_\_\_\_ month(s)

Duration: \_\_\_\_\_ hours or \_\_\_\_\_ day(s) per episode

**ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_





Certification of Health Care Provider for  
Family Member's Serious Health Condition  
(Family and Medical Leave Act)

U.S. Department of Labor  
Wage and Hour Division



DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.

OMB Control Number: 1235-0003

Expires: 5/31/2018

**SECTION I: For Completion by the EMPLOYER**

**INSTRUCTIONS to the EMPLOYER:** The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave to care for a covered family member with a serious health condition to submit a medical certification issued by the health care provider of the covered family member. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees' family members, created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

Employer name and contact: \_\_\_\_\_

**SECTION II: For Completion by the EMPLOYEE**

**INSTRUCTIONS to the EMPLOYEE:** Please complete Section II before giving this form to your family member or his/her medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave to care for a covered family member with a serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 29 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form to your employer. 29 C.F.R. § 825.305.

Your name: \_\_\_\_\_  
First Middle Last

Name of family member for whom you will provide care: \_\_\_\_\_  
First Middle Last

Relationship of family member to you: \_\_\_\_\_

If family member is your son or daughter, date of birth: \_\_\_\_\_

Describe care you will provide to your family member and estimate leave needed to provide care:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Employee Signature \_\_\_\_\_ Date \_\_\_\_\_

**SECTION III: For Completion by the HEALTH CARE PROVIDER**

**INSTRUCTIONS to the HEALTH CARE PROVIDER:** The employee listed above has requested leave under the FMLA to care for your patient. Answer, fully and completely, all applicable parts below. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the patient needs leave. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), or genetic services, as defined in 29 C.F.R. § 1635.3(e). Page 3 provides space for additional information, should you need it. Please be sure to sign the form on the last page.

Provider's name and business address: \_\_\_\_\_

Type of practice / Medical specialty: \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_\_) \_\_\_\_\_

**PART A: MEDICAL FACTS**

1. Approximate date condition commenced: \_\_\_\_\_

Probable duration of condition: \_\_\_\_\_

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?

☐ No ☐ Yes. If so, dates of admission: \_\_\_\_\_

Date(s) you treated the patient for condition: \_\_\_\_\_

Was medication, other than over-the-counter medication, prescribed? ☐ No ☐ Yes.

Will the patient need to have treatment visits at least twice per year due to the condition? ☐ No ☐ Yes

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?

☐ No ☐ Yes. If so, state the nature of such treatments and expected duration of treatment:

\_\_\_\_\_  
\_\_\_\_\_

2. Is the medical condition pregnancy? ☐ No ☐ Yes. If so, expected delivery date: \_\_\_\_\_

3. Describe other relevant medical facts, if any, related to the condition for which the patient needs care (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PART B: AMOUNT OF CARE NEEDED: When answering these questions, keep in mind that your patient's need for care by the employee seeking leave may include assistance with basic medical, hygienic, nutritional, safety or transportation needs, or the provision of physical or psychological care:

4. Will the patient be incapacitated for a single continuous period of time, including any time for treatment and recovery? ☐ No ☐ Yes.

Estimate the beginning and ending dates for the period of incapacity: \_\_\_\_\_

During this time, will the patient need care? ☐ No ☐ Yes.

Explain the care needed by the patient and why such care is medically necessary:

---

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5. Will the patient require follow-up treatments, including any time for recovery? ☐ No ☐ Yes.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

---

Explain the care needed by the patient, and why such care is medically necessary: \_\_\_\_\_

---

6. Will the patient require care on an intermittent or reduced schedule basis, including any time for recovery? ☐ No ☐ Yes.

Estimate the hours the patient needs care on an intermittent basis, if any:

\_\_\_\_\_ hour(s) per day; \_\_\_\_\_ days per week from \_\_\_\_\_ through \_\_\_\_\_

Explain the care needed by the patient, and why such care is medically necessary:

---

---

---

---

7. Will the condition cause episodic flare-ups periodically preventing the patient from participating in normal daily activities? \_\_\_\_ No \_\_\_\_ Yes.

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency: \_\_\_\_ times per \_\_\_\_ week(s) \_\_\_\_ month(s)

Duration: \_\_\_\_ hours or \_\_\_\_ day(s) per episode

Does the patient need care during these flare-ups? \_\_\_\_ No \_\_\_\_ Yes.

Explain the care needed by the patient, and why such care is medically necessary: \_\_\_\_\_

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**ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.**

---

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---

---

\_\_\_\_\_  
**Signature of Health Care Provider**

\_\_\_\_\_  
**Date**

**PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT**

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210.

**DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.**

## **APPENDIX 16-1**

**The form Counsel will use to calculate compensatory time off for travel is a spreadsheet found on the Labor and Employee Relations Page.**

**In order to use the form, it is helpful to know which types of time are creditable travel and non-creditable travel. Here are the general rules (see also 5 CFR 550.1401 *et seq.* and the OPM Questions and Answers):**

### **What is creditable travel?**

Travel outside of an employee's regular work hours on any workday (Monday through Friday for most employees) or on a Saturday or Sunday if it is also:

- Time spent traveling between an airport or train station located in the same commuting area where the employee works and a temporary duty station, including time to get from arrival airport to hotel and back.
- Time spent traveling directly between an employee's office and a temporary duty station (whether by car, plane or otherwise).
- Time spent traveling between two temporary duty stations.
- Up to 3 hours "waiting time" at an airport or train station before any initial departure.
- Time for any delays during travel (subject to rules below).

### **What is not creditable travel?**

- Travel during the employee's regular Monday – Friday work hours.
- Travel within 50 miles of an employee's regular POD.
- Travel time between an employee's home and an airport or train station within the employee's commuting area. Exception: If an employee for an unusual reason flies from an airport outside the commuting area (for example, 75 miles away from the regular POD) then the time spent going to the distant airport that exceeds the employee's normal commute is creditable.
- Extended waiting periods or delays during which an employee is free to rest, sleep, or otherwise use the time for his or her own purposes. For example, if an employee went to airport and waited for flight but flight was later canceled and he was told to return to airport in the morning for another flight, the waiting time at the airport is creditable but not the hours after the employee returned home.
- Travel hours on a government holiday (like Memorial Day or Columbus Day) that fall within the employee's regular tour of duty. Why? Because employees are paid on holidays, OPM says employees can only earn compensatory time off for travel if the employee is not otherwise compensated for this time.
- When an employee travels at an alternate time from the one provided for by the Government. For example, if a meeting or training ends on Friday at noon so that an employee can travel home in the afternoon, an employee cannot get more compensatory time off for travel by choosing to travel on Saturday.

Enter Name Below

rev. Aug 2011

John Doe

Official Duty Station (Office) within 50 miles of airport?

Y

Normal commute to the Office (hh:mm) e.g., 0:45

0:30

Report all time in  
Time Zone of Segment 1

Scheduled Time of Initial Flight

1:00 PM

7:45

Comp Time

Sunday, August 21, 2011  
HOME TO POST OF DUTY

Segment

EVENT

STATUS

TOUR OF DUTY

Begin

7:30 AM

End

4:00 PM

1

Left Home Arrived Airport  
COMMUTE TO AIRPORT 7:30 AM 8:15 AM Non-Creditable Travel

2

Arrived Airport Scheduled Depart.  
ARRIVAL WAIT 8:15 AM 9:00 AM Creditable Travel

3

Begin Time End Time  
PLANE IN TRANSIT 9:00 AM 11:10 AM Creditable Travel

4

Start of Wait End of Wait  
ADDITIONAL WAIT/CONNECTION 11:10 AM 1:10 PM Creditable Travel

5

Begin Time End Time  
PLANE IN TRANSIT 1:10 PM 3:30 PM Creditable Travel

6

Left Airport Arrived Hotel  
TRAVEL TO TEMP POD/HOTEL 3:30 PM 4:00 PM Creditable Travel

7

- -  
No Event No Event

0:00

0:45

2:10

2:00

2:20

0:30

0:00

158

Scheduled Time of Initial Flight

3:00 PM

3:30

Comp Time

Tuesday, August 23, 2011  
POST OF DUTY TO HOME

Segment

EVENT

STATUS

TOUR OF DUTY

Begin

8:30 AM

End

5:00 PM

1

Begin Time End Time  
OTHER or PARTIAL LEG 8:30 AM 1:00 PM Working Hours

2

Left POD Arrived Airport  
DEPART TEMP POD FOR AIRPORT 1:00 PM 2:00 PM Working Hours

3

Arrived Airport Scheduled Depart.  
ARRIVAL WAIT 2:00 PM 3:00 PM Working Hours

4

Begin Time End Time  
PLANE IN TRANSIT 3:00 PM 5:00 PM Working Hours

5

Begin Time End Time  
PLANE IN TRANSIT 5:00 PM 8:30 PM Creditable Travel

6

Arrived Airport Arrived Home  
COMMUTE TO HOME 8:30 PM 9:15 PM Non-Creditable Travel

7

- -  
No Event No Event

0:00

0:00

0:00

0:00

0:00

3:30

0:00



## Appendix 16-2

### Office of Chief Counsel Travel Savings Form

Employee Name:

Employee SSN:

|                      |  |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|--|
| Travel Dates         |  |  |  |  |  |  |  |
| Maximum Lodging Rate |  |  |  |  |  |  |  |
| Minus Actual Cost    |  |  |  |  |  |  |  |
| Minus Excess Transp. |  |  |  |  |  |  |  |
| Lodging Savings      |  |  |  |  |  |  |  |

|                      |  |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|--|
| Travel Dates         |  |  |  |  |  |  |  |
| Maximum Lodging Rate |  |  |  |  |  |  |  |
| Minus Actual Cost    |  |  |  |  |  |  |  |
| Minus Excess Transp. |  |  |  |  |  |  |  |
| Lodging Savings      |  |  |  |  |  |  |  |

Frequent Flyer Benefits or Other Qualifying Free or Discounted Flight Benefits:

|   |     |       |
|---|-----|-------|
| Travel Dates  | To: | From: |
| Origin City   |     |       |
| Destination City  |     |       |
| Government Contract Fare/Lowest Available Unrestricted Coach Fare | \$  |       |
| Amount of Frequent Flyer Benefits Savings                         | \$  |       |

### Summary Data

| <i>Description</i>              | <i>Amount</i> |
|---------------------------------|---------------|
| Total Lodging Savings           | \$            |
| Total Frequent Flyer Benefits   | \$            |
| Total Savings                   | \$            |
| Multiply by 50%                 | x .50         |
| <b>Award Amount to Employee</b> | <b>\$</b>     |

I understand that claims for this program are subject to audit and the falsification of claims are subject to all penalties as provided by law. I also understand that the payments to me are taxable income.

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Approval Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## PRIVACY ACT NOTICE

In compliance with Privacy Act of 1974 the following information is provided: Solicitation of the information on this form is authorized by 5 U.S.C. Chapter 57 as implemented by the Federal Travel Regulations, E.O. 11609 of July 22, 1971, E.O. 11012 of March 27, 1962, and E.O. 9397 of November 22, 1943. The primary purpose of this information is to facilitate the review, approval, accounting, and advancement of funds for travel savings program to be incurred under appropriate administrative authorization. The requested information will be used by officers and employees of this agency who have a need for such information in the performance of their official duties. The information will be disclosed to appropriate Federal, State, local or foreign agencies, when relevant to civil, criminal, or regulatory investigations or prosecutions, or when pursuant to a requirement by this agency in connection with the hiring or firing of an employee, security clearances, or other investigations of the performance of official duty while in Government service. Your Social Security Number (SSN) is solicited for use as an employee identification number. Disclosure of the requested information is voluntary, however, failure to provide the information required may result in delay or suspension of your travel savings program request.

### Instructions

#### Recording Lodging Savings

The maximum locality rate for lodging for each night must be recorded and is automatically calculated by the TRAS system. The actual lodging cost will be entered as well. The savings for lodging is determined by subtracting the actual lodging cost for each night from the maximum locality rate. Managers should ensure that the lodging amounts match the amounts shown on TRAS or manual voucher. Transportation costs to the TDY site and return to the hotel will be factored into computing the savings. Any transportation expenses that are more than the normal amount incurred from the TDY site to the more expensive lodging will be deducted from the lodging savings, and the remaining savings will be eligible toward the minimum savings of \$100. (These costs are referred to as "Excess Transportation" on the Travel Savings Form). An employee can also claim lodging savings if: (1) he or she travels on his or her own time (with advance management approval) to/from a Division-wide meeting / official training; (2) he or she attends the entire training / meeting; and (3) he or she returns to the work the following day.

#### Flight Savings

Employees who enroll in frequent flyer benefit programs and obtain a free coach class ticket with frequent flyer miles earned on official and/or personal travel are eligible for the travel savings award. Counsel employees who receive free or discounted flights due to a family relationship are also eligible for a travel gainsharing award. Savings on transportation costs will be measured by the contract city pair rate in effect at the time of the flight. If no contract fare is available, then the lowest available non-restricted coach fare will be used as a basis for determining the savings. Where frequent flyer benefits are claimed, managers should verify government contract airfare with the designated government travel agency.

The Summary Data represents the savings to Counsel. The total savings, minimum of \$100, is multiplied by 50% to arrive at the award amount.

## Appendix 17-1

### RETIREMENT CRITERIA

An employee can retire when his/her age and years of Federal service match one of the retirement combinations shown below.

#### Retiring under the Civil Service Retirement System (CSRS)

At least age 55 with 30 years of service or more;  
At least age 60 with 20 years of service or more;  
At least age 62 with 5 years of service or more.

#### Retiring under the Federal Employees Retirement System (FERS)

At least 30 years of service and your Minimum Retirement Age (MRA);  
At least 20 years of service and 60 years old;  
At least 10 years of service and your Minimum Retirement Age (MRA);  
(optional, with reduced benefits)  
At least 5 years of service and 62 years old.

#### Minimum Retirement Age

| If you were born... | Your MRA is...   |
|---------------------|------------------|
| Before 1948         | 55               |
| In 1948             | 55 and 2 months  |
| In 1949             | 55 and 4 months  |
| In 1950             | 55 and 6 months  |
| In 1951             | 55 and 8 months  |
| In 1952             | 55 and 10 months |
| In 1953 -1964       | 56               |
| In 1965             | 56 and 2 months  |
| In 1966             | 56 and 4 months  |
| In 1967             | 56 and 6 months  |
| In 1968             | 56 and 8 months  |
| In 1969             | 56 and 10 months |
| In 1970 and after   | 57               |

**Appendix 21-1**

**Office of Chief Counsel: Policy Regarding Records of Tax Enforcement Results**

Section 1204 of the Internal Revenue Service Restructuring and Reform Act, Pub. L. No. 105-606, 112 Stat. 685 (July 22, 1998) (RRA '98) provides as follows:

(a) IN GENERAL.-- The Internal Revenue Service shall not use records of tax enforcement results-

- (1) to evaluate employees; or
- (2) to impose or suggest production quotas or goals with respect to such employees.

\* \* \* \* \*

(c) CERTIFICATION.-- Each appropriate supervisor shall certify quarterly by letter to the Commissioner of Internal Revenue whether or not tax enforcement results are being used in a manner prohibited by subsection (a).

Section 1204 of RRA '98 applies only to the Internal Revenue Service. As a matter of policy, however, the Office of Chief Counsel (Office) has determined to adopt subpart (a) of Section 1204 and to prohibit the use of records of tax enforcement results to evaluate Office employees or to impose or suggest production quotas or goals with respect to Office employees. To monitor and ensure compliance with this policy, the Office has determined to impose a certification process whereby Office supervisors will certify quarterly to the Chief Counsel whether or not tax enforcements results are being or have been used in a prohibited manner.

 8/25/4  
Date

Associate Chief Counsel  
(Finance & Management)

## **Appendix 33-1**

Please see the following page for Appendix 33-1, the Grievance Level Chart.

| OFFICE  | 1 <sup>ST</sup> STEP   | 2 <sup>ND</sup> STEP   | FINAL STEP                               |
|---|------------------------|--|--|
| <b><u>CT</u></b><br>➤ Field   | Area Counsel           | (NONE)   | Division Counsel/Associate Chief Counsel |
|   | ➤ National Office      |  |  |
| <b><u>SBSE</u></b>  | Associate Area Counsel | Area Counsel   | Division Counsel                         |
| <b><u>TEGE</u></b><br>➤ Field   | Area Counsel           | Deputy Division Chief Counsel/Deputy Associate Chief Counsel | Division Counsel/Associate Chief Counsel |
|   | ➤ National Office      | Deputy Associate Chief Counsel                               | Division Counsel/Associate Chief         |
| <b><u>LB &amp; I</u></b>  | Associate Area Counsel | Area Counsel   | Division Counsel                         |
| <b><u>F&amp;M</u></b><br>➤ Field  | Office Manager         | Area F&M Manager   | Associate Chief Counsel                  |
|   | ➤ National Office      | Division Director  |  |
| <b><i>National Office Technical Divisions with no 2<sup>nd</sup> level management (i.e., FIP, IT&amp;A, CORP, PS&amp;I and most of P&amp;A)</i></b> | Branch Chief           | (NONE)   | Associate Chief Counsel                  |
| <b><i>National Office Technical Divisions with 2<sup>nd</sup> level supervisor (i.e., APA in INTL)</i></b>  | Branch Chief           | 2nd level supervisor   | Associate Chief Counsel                  |

This chart is for illustrative purposes. For employees where the chart does not match the management structure (for example, employees in the support units within Procedure and Administration), the 1<sup>st</sup> step is the first-line manager and the final step is the Associate Chief Counsel or Division Counsel. If there is an additional level of management between the first-line manager and the Associate Chief Counsel or Division Counsel, then that level of management serves as the 2<sup>nd</sup> step.



**GRIEVANCE FORM**

Date Filed: \_\_\_\_\_

1. Employee name: \_\_\_\_\_
2. Employee position/grade: \_\_\_\_\_
3. Employee organization symbols: \_\_\_\_\_ Tel. No: \_\_\_\_\_
4. Employee representative (check one):

☐

Represented by self

☐

Represented by Union

Name, title, and telephone number of Union Representative:

\_\_\_\_\_

5. Name and title of manager with whom this form is filed:

\_\_\_\_\_

6. Nature of grievance (i.e. description of incident giving rise to grievance, date of incident, place where the incident occurred, person(s) involved, etc.):

\_\_\_\_\_

7. Specific article and section of the Agreement, provision of the statute or regulation or other conditions of employment alleged to have been violated:

\_\_\_\_\_

8. Explanation of how the article and section of the Agreement provision of the statute or regulation or other conditions of employment have been violated:

\_\_\_\_\_

9. Specific remedy requested:

\_\_\_\_\_

10. Request meeting (check one): ☐ Yes ☐ No

11. Additional explanation (attach more pages, if necessary):

\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Telephone Number

NOTE: The use of this grievance form is optional at Step 1. But, if no grievance form is used at Step 1, then NTEU and/or the grievant must provide all relevant information from the form in order to proceed to Step 2 or higher in the grievance process.



## Appendix 42-1

OFFICE OF  
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

**2 CHANGES PROPOSED BY COUNSEL  
ON AUGUST 1, 2017 MARKED VIA  
TRACK CHANGES AND COMMENTS**

To: *Complainant's Name*

From: *Counselor's Name*  
EEO Counselor

Date:

### **NOTICE OF RIGHTS AND RESPONSIBILITIES**

Equal Employment Opportunity Commission (EEOC) Regulations at 29 CFR Part 1614 mandate that federal agencies provide EEO Counseling as the initial step in resolution of EEO issues. Further, 29 CFR §1614.105(b) requires that individuals seeking counseling be advised in writing of their rights and responsibilities under the regulations. This "Notice of Rights" is provided for your reference and in compliance with the regulations.

If you do not pursue counseling after the initial interview, no further action will be taken with respect to the matters discussed. If you elect to pursue counseling or an alternative dispute resolution procedure, and the matter is not resolved, a final interview will be conducted during which you will be given a written notice of your rights and responsibilities in the formal complaint process.

#### **1. Right to Representation:**

- You have the right to be accompanied by a representative of your own choosing at every stage in the processing of your complaint, including counseling [§1614.605(a)].
- If you wish to be represented, complete and sign the "Designation of Representative and Limited Power of Attorney" form which you will receive from the Counselor. If you later wish to proceed without a representative or if you wish to change your representative, you must file a written notice.

#### **2. Anonymity:**

- You have the right to remain anonymous during EEO counseling. The initial interview with an EEO Counselor will include a discussion of whether or not you wish to remain anonymous.
- If you file a formal complaint of discrimination, you will have no right to anonymity.

### **3. Election of Process:**

- If alternative dispute resolution (ADR) is applicable in your particular case, you may choose to proceed with ADR in lieu of EEO counseling [§1614.105(b)(2)].
- Bargaining unit employees covered by the Counsel-NTEU collective bargaining agreement have the right to file a grievance on this matter under the negotiated grievance procedure in the collective bargaining agreement instead of under the EEO complaint procedure. The election to proceed either under the EEOC regulations or under the collective bargaining agreement is made by the filing of a written grievance or complaint [§1614.301, Article 3, Section 4].
- If the claims you raise are appealable to the Merit Systems Protection Board (MSPB), you have 30 days from the date of the alleged discriminatory act to file an appeal with MSPB and 15 days from the date of the “Notice of Right to File a Discrimination Complaint” or 30 days after the initial counselor contact to file a formal mixed case EEO complaint. NTEU may also invoke arbitration on such matters on behalf of bargaining unit employees. You may **not** file both an MSPB appeal and an EEO complaint on the same matter or arbitration under the union contract and an EEO complaint on the same matter. The process selected first is deemed the elected process [§1614.302].

### **4. Freedom from Reprisal:**

- You, your representative, and your witnesses shall be free from reprisal in the presentation and processing of a complaint, including EEO counseling, or at any time thereafter [§1614.101(b)].

### **5. Filing a Formal Complaint:**

- The Counselor shall conduct the final interview and provide you with a “Notice of Right to File a Discrimination Complaint” form, within 30 days of the date you brought the matter to the counselor’s attention [§1614.105(d)].
- Prior to the end of the 30-day counseling period, you may agree in writing to extend the counseling period for up to an additional 60 days. If the matter has not been resolved by the conclusion of the agreed upon extension, a final interview will be conducted and the “Notice of Right to File a Discrimination Complaint” shall be issued [§1614.105(d)].

- If you choose to participate in an ADR procedure, a period of 90 days will be allowed to secure a resolution. If the matter has not been settled within that time, a final interview will be conducted and the “Notice of Right to File a Discrimination Complaint” form shall be issued [§1614.105(f)].
- If the matter is not resolved during counseling or ADR, you may file a formal EEO complaint within fifteen (15) days of your receipt of the “Notice of Right to File a Discrimination Complaint” form. Your complaint must be in writing and signed by you or your designated representative. Your complaint must be precise and describe generally the actions or practices which form the basis of the complaint. The EEO Counselor will provide you with a formal complaint form and information as to where and with whom the formal complaint must be filed [§1614.106].
- Only issues or claims raised at the counseling stage may be raised in a formal complaint. Claims that are like or related to those raised in the initial complaint may be filed as an amendment [§1614.105(b)(1) and §1614.106(d)].
- If you have filed two or more complaints, the agency must consolidate them after appropriate notice. When a complaint has been consolidated with one or more earlier complaints, the agency shall complete its investigation within the earlier of 180 days after the filing of the last complaint or 360 days of the filing of the first complaint [§1614.606].

## **6. Processing of Formal Complaints:**

- You will receive notification from Treasury regarding the acceptance of your complaint. If your complaint is not accepted, you will receive information regarding your appeal rights.
- You or your representative will be provided a copy of the counselor’s report and investigative file within 180 days from the effective date of filing the formal complaint, unless the complaint has been amended. In that case, the investigative file shall be issued within 180 days after the last amendment or 360 days after the filing of the original complaint, whichever is earlier.

Upon mutual agreement, the investigation may be extended for a period of not more than 90 days [§1614.108(f)].

- You may request a hearing before an EEOC administrative judge at any time after 180 days of the filing of the formal complaint, or within 30 days of receipt of the investigative file, whichever comes first. If you elect a hearing, your request should be made directly to the appropriate EEOC office. You must notify the Regional Complaint Center of your hearing request [§1614.108(f)].
- If you do not elect a hearing, you have the right to a final agency decision after completion of the investigation [§1614.108(f)].

## **7. Processing of Mixed-Case Complaints:**

- If you file a formal complaint of discrimination regarding an issue appealable to the MSPB, you have filed a mixed case. You will receive the investigative file as outlined above; however, you may not request a hearing before the EEOC. You may appeal the final agency decision to the MSPB.

## **8. Other Responsibilities:**

- You are entitled to a reasonable amount of official time to prepare your complaint [§1614.605(b)].
- You are required to mitigate damages, i.e. you must look for other appropriate employment and you must seek treatment for any injury you claim [§1614.105(b)(1)].
- You are required to keep the agency informed of your current mailing address and serve copies of hearing requests and appeal papers on the agency [§1614.105(b)(1)].

## **9. Sexual Harassment:**

- An allegation of sexual harassment may be brought directly to the attention of the bureau head and Treasury's Inspector General. The Counselor will provide you with a consent form if you wish to do so.

## **10. Sexual Orientation:**

- Treasury Department employees are protected from discrimination based on sexual orientation through internal department regulation. If you feel you have been discriminated against on this basis, you may file a formal complaint with the Department. A final agency decision will be issued based on the record; however, you will have no right to a hearing before an administrative judge and no appeal rights to the Equal Employment Opportunity Commission.

## **11. Right to File a Civil Action:**

- You may file a civil action in an appropriate United States District Court within 90 days of receipt of the final decision on your complaint, or 180 days after the filing of the formal complaint if a final decision has not been issued and an appeal has not been filed. You may file a civil action within 90 days of receipt of the EEOC's final decision on an appeal, or 180 days from the date of filing an appeal if there has been no final decision by the EEOC [§1614.407],
- If your formal complaint concerns a matter appealable to the Merit Systems Protection Board (a "**mixed case**"), you may file a civil action in United States District Court within 30 days of receipt of a final decision by the agency unless an appeal is filed. If you choose to appeal the agency decision to MSPB or EEOC or

both, you may file a civil action within 30 days of receipt of the final appeal notice or 120 days after the filing of the formal appeal if no decision has been rendered.

- If you believe you have been subjected to prohibited **age discrimination**, as an alternative to filing a complaint under the EEOC regulations, you may file a civil action in an appropriate U.S. District Court at any time within 180 days of the alleged discriminatory event, provided that you give the EEOC notice of intent to sue at least 30 days in advance of filing suit [§1614.201(a)].
- If you believe you have been subjected to prohibited **sex-based wage** discrimination, you may file a civil action in an appropriate U.S. District Court under the Equal Pay Act simultaneous with claims raised under title VII and processed under 29 CFR Part 1614 [§1614.409].

## **12. Right to a Court Appointed Attorney**

- If you elect to file a civil action under ADEA, title VII or the Rehabilitation Act, you may appeal to the U.S. District Court for appointment of an attorney to represent you in the court proceeding. The court may appoint an attorney to represent you and may permit commencement of the civil action without payment of fees, costs, or security.

## **13. Use of Complaint Form**

- You may use the individual complaint form to file your complaint of discrimination. Use of the form is not required; however, you must provide sufficient information to demonstrate that your complaint is acceptable under applicable laws and regulations governing complaint processing in Federal agencies [§1614.106(c)].

**I have been advised of the above matters and have received a copy of this Notice of Rights on this date.**

---

**Signature of Complainant/Representative**

---

**Date**



## Appendix 48-1

### OFFICE OF CHIEF COUNSEL TELEWORK AGREEMENT

Name:

Date of Request:

Job Title/Grade:

Organization:

Type of Telework Request *(Please refer to 2018 Counsel-NTEU Agreement for more information on qualifications):*

☐ Level 1 – Up to 32 hours per pay period / (Project-Based and/or set 1 – 2 days per Monday – Friday week)

☐ Level 2 – *(If Qualified)*. Up to 48 hours per pay period and/or 3 days per Monday – Friday week.

Qualifications under 2018 Counsel-NTEU Agreement are:

- Must be in Attorney, Tax Law Specialist or Paralegal position
- Have at least 4 years of current relevant experience in Counsel
- Work full-time flexitour with credit hours or gliding schedule
- Have regular telework location within 125 miles of your POD

Post of Duty (POD):

Alternate Site Address:

Contact Phone Number at Alternate Site *(Not Soft Phone/Desktop Phone):*

Agreement Period *(Term is One Year - may be renewed with Managerial Approval):*

From (date):

To (date):

Telework Schedule:

Requested telework schedule

☐ Project-based (meaning request for telework each time with information on project to be done)

☐ Regularly scheduled telework (meaning set schedule of day(s) per Monday – Friday work week)

☐ Or combination of project-based and regularly scheduled

If you are requesting any regularly scheduled telework, please mark the specific days requested:

(PP WEEK 1) Monday ☐ Tuesday ☐ Wednesday ☐ Thursday ☐ Friday ☐

(PP WEEK 2) Monday ☐ Tuesday ☐ Wednesday ☐ Thursday ☐ Friday ☐

Procedural Requirements Checklist:

1. By signing this Telework Agreement, I am voluntarily requesting telework. I understand that my official duty station will remain \_\_\_\_\_. All pay, leave and travel entitlements will be based on my official duty station.
2. I have completed the Telework Training required by the 2018 Counsel-NTEU Agreement.
3. I have read and understand the attached policies and procedures regarding telework in the IRS Office of Chief Counsel.

☐ I have read and agree to abide by all provisions of Article 48 of the 2018 Counsel-NTEU Agreement.

Employee's Signature

Date

## **CHIEF COUNSEL POLICIES AND PROCEDURES FOR TELEWORK**

### **Time, Leave and Office Closings:**

1. I understand while teleworking I must be available to supervisors, customers, clients, and co-workers. Accordingly, I will be available for all business during my regularly scheduled tour of duty while teleworking, except for approved leave or credit hours.
2. I agree to notify my supervisor and request appropriate leave if I am unable to perform work during my tour of duty. I understand that I will be responsible for requesting leave or credit hours in accordance with established office procedures for all periods I do not work during my tour of duty while on approved telework.
3. I understand that I may (in appropriate circumstances) be called back to my official duty station in accordance with the rules and procedures explained in Article 48, Section 6(D).
4. I understand that when an emergency condition forces the closure of my POD and employees working in that facility are granted administrative leave, will not receive administrative leave unless an exception in Article 48, Section 10 of the 2018 Counsel – NTEU Agreement applies to my individual situation.

### **Safety and Security Issues:**

5. I understand that it is my responsibility to observe the required security precautions normally associated with my work. I will apply approved safeguards to protect any information regarding tax returns and return information as defined in I.R.C. § 6103 and comply with the Privacy Act, 5 USC § 552(a). Due to security standards, I may not use my home computer for Office work.
6. I agree to provide an adequate work area for the performance of my official duties. I understand any accident or injury at the telework site while I am performing work duties must be brought immediately to the attention of my supervisor. I understand that Federal Employee's Compensation Act regulations and procedures will be applied if I am injured while performing work duties.
7. I understand I am responsible for ensuring the safety of the work environment at my telework location and the Government will not be liable for damages to my personal or real property occurring during the course of my performing official duties, or while using Government equipment in my residence/alternative work site, except to the extent that the Government is held liable under the Federal Tort Claims Act or the Military Personnel and Civilian Employee's Claims Act. I also understand a claim for negligent or wrongful acts or omissions that occur while I work at my residence/alternative work site may be covered under the Federal Tort Claims Act.

### **Costs and Equipment:**

8. I understand that the Government will not be responsible for providing high-speed internet access or any operating costs, home maintenance, phone installation, or other incidental costs (e.g., utilities) associated with the use of my residence/alternative work site. This does not preclude reimbursements for authorized expenses incurred while conducting official business for the Office (e.g. long distance phone calls). I understand that I will be responsible for notifying my supervisor of any Government resources or services I may need to use as well as the amount of expenses for such resources or services and that any such services or resources (other than long distance phone calls to the office from the alternate work site) must be approved before my securing them. Requests for reimbursement of these services and resources will be substantiated by appropriate receipts.
9. I understand I will be responsible for the protection of any Government equipment provided to me, and that I am solely responsible for the cost, if any, of transporting such Government equipment from my official duty station to my telework location as well as the costs, if any, of returning the equipment to my official duty station.

(If deemed necessary by manager approving form):

☐

Due to employee's specific job, there are requirements on how long files can be kept at a telework location.

☐

Any other unique rules based on employee's particular job

I have discussed the employee's Telework Agreement with him or her and I am approving this Agreement:

---

Manager Signature

---

Date

**Appendix 54-1**

**CONTINUING MID-TERM AGREEMENTS**

The following mid-term agreements continue in effect:

- ITA CAM Data forms (dated January 13, 1998)
- Business Cards (dated January 23, 2001)
- Field Matrix MOU (dated November 10, 2005) – As modified by the parties on April 15, 2010 \*\*\*
- Chief Counsel Advice (CCA) (dated July 28, 2008)
- HSPD-12 (dated October 8, 2008)
- E-Filing MOU (dated August 19, 2010)
- Joint Counsel – NTEU Memo on Union Time (dated March 30, 2012) (as modified by Article 39) \*\*\*
- Flexiplace Office Sharing / Making Space TEGE MOU (dated October 28, 2014) \*\*\*
- Realignment and Move of TEGE (dated October 29, 2014)
- HSPD – 12 Smart ID Implementation LOU (dated November 10, 2014)
- Electronic Fax MOU (dated November 3, 2015)

The three MOU's noted with \*\*\* above (Field Matrix MOU, Joint Counsel – NTEU Memo on Union Time, and Flexiplace Office Sharing) are attached as part of Appendix 54-1.

ADDENDUM TO FIELD MATRIX MOU:

The following language will apply to all Counsel employees:

- A. Employees may volunteer for cross-functional work assignments. An employee interested in developmental cross-assignments should discuss the type of developmental work he or she is interested in with his or her managers so that the manager can assist the employee in obtaining the additional experience. If the cross-functional assignment is reviewed by a manager other than the employee's immediate supervisor, that manager may provide feedback to the employee's immediate supervisor.
- B. The parties recognize the importance of developing employees in performance of all tasks assigned to their positions. Therefore, the Office will consider employees' requests to enhance their experience in all tasks assigned to their positions, including the opportunity to volunteer for assignments for developmental purposes in accordance with Article 26, Section 2(D).
- C. In accordance with Article 26 of the Agreement, if management determines additional training is needed for a National Office employee who is assigned to sign and file a document or appear before the U.S. Tax Court, management will arrange for such training on a case-by-case basis. Such training may be provided as on-the-job (i.e., time to review materials from prior Training classes, mentor, additional supervision, etc.) vs. in a classroom setting.

Agreed to by the parties on April 15, 2010:

NTEU Negotiator

Director, Labor & Employee Relations

### Memorandum of Understanding

The Office of Chief Counsel has instituted a new Field Management Matrix system designed to retain the best aspects of Counsel's current operating structure, including excellent client relationships, while addressing concerns that have surfaced since Counsel's 2000 reorganization. Field Matrix Management is an integrated management structure focused on office-wide issues that balances geographic and functional needs at all levels but does not change existing Divisional lines of authority. This involves 49 Managing Counsel, 6 Matrix Management Area Teams, and 1 Field Leadership Team. This structure will overlay the existing Division Counsel structure.

Each field office will have a Managing Counsel whose role is to provide office-wide leadership in a post of duty. Current line management does not change, but there will be a "One Office" approach to Counsel's daily work. Managing Counsel will address issues that have an office-wide impact, e.g., office functions, office closings, recruitment, training, and local bar and taxpayer community contacts. Many current procedures used by the Office of Chief Counsel remain unchanged by the field matrix management approach. For example, the field matrix plan does not change the terms of the Counsel-NTEU collective bargaining agreement including, for example, tours of duty, credit hours, and alternative work schedules (Article 5), compensatory time (Article 15), or flexplace (Article 48).

Counsel has already implemented Stage 1 of the Field Matrix Management plan (including designating all Managing Counsel and all Area Teams). Stage 2 of the plan involves cross-assignment of work and impacts field Counsel employees only (primarily attorneys). All field Divisions (SBSE, LMSB, TEGE, CT, and FM) will participate in Stage 2. The cross-assignment of work between Divisions will address two issues: employee development and workload imbalances. Due to the nature of the plan, Counsel gave notice to NTEU about this plan and Counsel and NTEU have agreed to the following:

1. After this memo of understanding ("MOU") is signed, the Office will hold a meeting in each field office. The post-of-duty meetings will be conducted by the Managing Counsel and will explain the details about how the cross-assignment of work between Divisions will occur. This MOU will be addressed in each meeting and there will also be an opportunity for bargaining unit employees to ask questions. Because of the nature of the meetings, NTEU will be invited to attend the meetings.
2. All employees impacted by the proposed changes have already been provided with information about this initiative via the Counsel Intranet. All impacted employees will be given a written copy of this MOU.



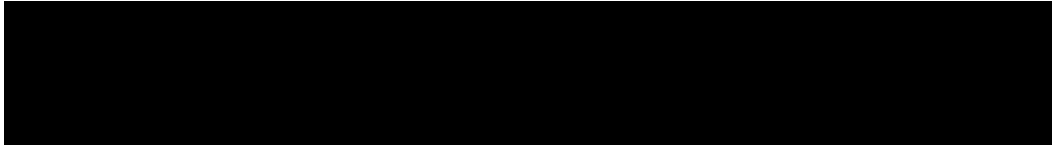
3. In accordance with Article 28 of the Counsel-NTEU agreement, if management determines additional training is needed to assist an individual employee in a cross-functional assignment management will arrange for such training on a case-by-case basis. Such training will normally be provided on-the-job vs. in a classroom setting (i.e., time to review written materials from prior Training classes, mentor, additional supervision, etc).
4. The Office has determined that that "Stage One" of this initiative only impacts non-bargaining unit employees. There will be no impact on the bargaining unit as a result of this stage of the initiative (e.g., there will be no change to existing line authorities, no employee will be assigned to a new manager, etc.).
5. Should either party identify issues or concerns with "Stage One" of this initiative, the parties will meet to discuss and/or negotiate such issues or concerns as soon as possible.
6. For "Stage Two" of this initiative, the Office has determined that all assignments (including cross-functional) will be made by an employee's immediate supervisor. If additional follow-up information is needed, the cross-functional manager may also discuss the reassignment with the employee. In most situations, the Office has determined that the cross-assigned work will be reviewed by the employee's regular manager but there may be exceptions made on a case-by-case basis. The employee will be advised when the assignment is given about who will be the reviewer.
7. Cross-functional assignments will be made in the same manner in which assignments are currently made in each office. If an employee who receives a cross-functional assignment has questions about the priority of this assignment in comparison with other work, the employee should discuss this matter with his/her supervisor and the supervisor will provide direction as to specific priorities.
8. The Employer has determined that an employee's evaluation will only be written by that employee's immediate supervisor. If the cross-functional assignment was reviewed by a manager other than the employee's immediate supervisor, that manager may provide feedback to the employee's immediate supervisor, but will not write the employee's evaluation.
9. The cross-assignment of work serves two purposes: (1) assists with employee development, and (2) helps the Office to handle workload imbalances.
  - A. For cross-functional work assignments related to employee development, the Office has determined that those assignments will be made only to employees who volunteer for such assignments. An employee interested in

developmental cross-assignments should discuss the type of developmental work he/she is interested in with his/her manager so that the manager can assist the employee in this matter. The exception to this general rule is that management reserves the right to make developmental assignments to employees in their first three (3) years with Counsel in order to fully develop their work skills as Counsel attorneys.

B. The Office does not expect that workload demands will regularly require cross-functional work assignments but a need for such assignments will arise on certain occasions. To handle cross-functional work assignments related to workload balancing, the Office will establish for each Field Matrix management area a roster of employees interested in volunteering for such assignments. Employees will be asked at least once each year whether they would like to add their name (or subtract their name) from this list. If management needs to cross-assign a case (or cases) for workload balancing purposes, the Office will normally use the volunteers whose names appear on the roster. Should the Office determine (using its discretion), however, that the skills and experience of such volunteers, or other efficiency concerns (workload, travel costs, etc.), make such assignments impractical, the Office will cross-assign the case(s) outside the volunteer roster. It is understood that when making cross-assignments for workload balancing purposes, it does not serve management's purposes to cross-assign work away from a particular Division in a way that overburdens any other employee or small group of employees.

10. The Office will consider any increases in workload as a result of this initiative when performing employee evaluations. Employees who believe there are inventory or workload problems as a result of cross-assignment of work are encouraged to discuss inventory problems with their supervisor.
11. The parties agree to form a joint labor-management assessment team to assess the effectiveness of the cross-assignment of work under this initiative and its impact on employees. The joint team will be comprised of 6 members (½ management representatives and ½ Counsel bargaining unit employees appointed by NTEU). This assessment team will convene one year after the effective date of this agreement to discuss the effectiveness of the impact of the initiative. The assessment team may suggest modifications or changes to the initiative, and/or (by majority vote) determine the necessity and/or and frequency of further follow-up actions.
12. The Office has determined that no adverse impact on the bargaining unit (e.g. reductions in staffing levels, downgrades, etc.) will occur as a result of the implementation of this initiative.

13. This agreement will become effective upon agency head review or on the 31<sup>st</sup> day after execution, whichever comes first.



Associate Chief Counsel  
(Finance and Management)

National Negotiator  
National Treasury Employees Union

**JOINT COUNSEL -- NTEU MEMO**

**To:** All Chief Counsel Stewards / NTEU Representatives  
All Managers of Counsel Stewards

**From:** Wendy Lucas-Pisman  
National NTEU Negotiator  
- and -  
Susan Nieser  
Director, Labor and Employee Relations  
IRS Office of Chief Counsel

**Date:** March 30, 2012

Through this memorandum, the Office of Chief Counsel and the National Treasury Employees Union (NTEU) jointly announce the new codes and other specific information about how union time should be reported under the new Counsel -- NTEU 2011 Agreement.

As a part of the background for this memo, both NTEU and the Office of Chief Counsel share an interest in ensuring that union time is accurately and fully reported. As set forth in Article 39, Section 5B(3) National NTEU will ensure that NTEU Counsel stewards accurately report all union time.

Pursuant to Article 39, Section 5(B) union time should be reported by categories. NTEU and the Office of Chief Counsel have agreed that effective April 1, 2012, the general codes of NTEUOFF and NTEUBNK agreed upon by the parties 2005 Office of Chief Counsel and NTEU National Agreement and the Memorandum dated May 11, 2005, will no longer be used.

Therefore, effective April 1, 2012, union time reported in CASE shall use the following codes:

**BARGOFF** -- negotiations / bargaining with mgmt on changes in work conditions (including briefings) -- code applies only for meetings when management & NTEU are both present

**BARGBNK** -- background work by NTEU related to mid-term bargaining issues, including time spent discussing issues with other stewards & NTEU representatives and time writing emails

**GRIEOFF** -- time spent in grievance meetings or other grievance-related discussions with mgmt (would also cover other dispute processes like oral replies, probationary terminations, ULP's, or EEO complaints)

**GRIEBNK** – background work by NTEU related to grievance or other dispute resolution issues, including all time spent drafting grievances and information requests, reviewing mgmt responses, talking to grievants, other NTEU reps, etc. (includes oral replies, probationary terminations, ULPs or EEO complaints)

**MISCOFF** – any union-related time that does not fall into categories of mid-term bargaining or grievance/dispute resolution. This code is only for meetings that include 1 or more mgmt officials. Examples: union attendance at a formal meeting, EEO committee meetings, LMRC / Labor-mgmt forum meetings, general discussions with management.

**MISCBNK** – any union-related time that does not fall into categories of mid-term bargaining or grievance/dispute resolution where the discussion/activity does not involve management. Examples: Discussions /conference calls between union stewards/NTEU reps, writing/reading emails about NTEU matters, union-sponsored training, attending the NTEU Legislative conference, etc.

These are indirect time categories in the CASE system and do not require new CASE timesheets since any steward can use these codes. No indirect code has been set up for term negotiations since the parties are not involved in term negotiations at this time.

For stewards who do not use CASE to report their duty time (e.g., field clerical stewards), union time should be reported monthly using the newly revised Appendix 39-1. (Attachment). If a field clerical steward has no union time to report for a month, a negative report should be submitted. This can be done by sending an email to the Director, Labor & Employee Relations or submitting an Appendix 39-1 showing no time.

Your cooperation with these new procedures is appreciated.

Director,  
Labor & Employee Relations

5/30/2012  
Date

Assistant Counsel for Negotiations  
National Treasury Employees Union

5/30/2012  
Date

### **Appendix 39-1**

Please see the following pages for Appendix 39-1, the Union Time Reporting Form (to be used only by stewards who do not report time in CASE).



## Appendix 39-1

## Union Time Reporting Form

|                             |             |         |          |
|-----------------------------|-------------|---------|----------|
| 1. Name of Steward/Official | 2. Location | 3. Year | 4. Month |
|-----------------------------|-------------|---------|----------|

## DAY OF THE MONTH

|               | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 |
|---------------|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|
| Bank Time     |   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |
| Official Time |   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |

|               | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | Total |
|---------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-------|
| Bank Time     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 0.00  |
| Official Time |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 0.00  |

OFFICIAL TIME - See Article 39, Section 3.

BANK TIME - See Article 39, Section 4.

Remarks:

- Time should be recorded in hours (or quarters of an hour). Each category should be totaled before submission to the Labor Relations Staff.
- Use of Time by the Union Steward/Official should be approved by management prior to its use. Stewards must check out prior to leaving the work area and must check back in upon return.
- Refer to the Steward and Official Time Article (Article 39) for specific information on the types of activities that may be changed to bank time or official time.
- Questions regarding use of time should be referred to the Labor and Employee Relations Staff.
- Time should be reported using the categories outlined in Article 39 Section 5 (B)(2).
- This report must be furnished to the Labor and Employee Relations staff at 1111 Constitution Ave. by the 5<sup>th</sup> workday of each month or can be faxed to 202-622-5125.

My time reported on this monthly chart (both bank and official time) falls into these categories (percentages must equal 100%):

\_\_\_\_\_ % Bargaining  
 \_\_\_\_\_ % Grievance / Dispute Resolution  
 \_\_\_\_\_ % Miscellaneous

Signature of Manager: \_\_\_\_\_

Date: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

**MOU REGARDING FLEXIPLACE OFFICE SHARING AND "MAKING SPACE" FOR  
NEW CC:TEGE EMPLOYEES**

The IRS Office of Chief Counsel ("Counsel" or "Office") has invoked the provisions of Article 48, Section 9(B) of the 2011 Counsel – NTEU Agreement and will require employees in the National Office in Washington, D.C. who work regularly scheduled flexiplace ("RSF") and those employees in the National Office in Washington, D.C. who work expanded flexiplace under the New Technology Pilot to share office space. The Office has determined that it is necessary for employees working RSF and employees working on the New Technology Pilot to give up or share their private offices. This need is the result of the upcoming organizational realignment and physical movement of approximately 43 bargaining unit employees in TEGE from the IRS to CC:TEGE in the IRS Office of Chief Counsel.

Additionally, because of the realignment and movement of employees from the IRS to CC:TEGE, some organizations in the Office of Chief Counsel will be required to give up space. As a result, some employees in these organizations will be required to move to new offices. A list of all employees in the Counsel organizations other than CC:TEGE who will be required to move as a result of the realignment of IRS employees to CC:TEGE is attached (Attachment 1).

This MOU contains the agreement of the parties with respect to flexiplace office sharing in the National Office and any movement of existing IRS Office of Chief Counsel employees in the National Office to make room for the new Qualified Plans and Exempt Organizations branches in CC:TEGE as a result of the realignment of IRS employees to CC:TEGE.

In order to implement these changes, the parties agree as follows:

**GENERAL BACKGROUND AND INFORMATION**

1. The provisions of this MOU concerning flexiplace office sharing will apply to all Associate offices in the National Office.
2. The provisions of this MOU concerning "making space" for CC:TEGE apply to the following impacted Associate offices: CORP, ITA, PA, and PSI.

For purposes of Article 46 Section 9 of the 2011 Counsel-NTEU Agreement, any employee who is required to give up his or her office space to make space for CC:TEGE will be considered to be moving involuntarily and will be considered to be caused by management action.

3. Prior to implementation and after the MOU is signed, the Office will distribute this MOU via email to all National Office employees in an effort to explain flexiplace office sharing and the moves necessary to make space for CC:TEGE. The Office will also request that the IRS provide this MOU to IRS TEGE employees eligible to apply to Counsel because of the realignment of such employees to Counsel before

volunteers are solicited. The Office will also provide this MOU to IRS TEGE employees who move to Counsel.

4. Counsel will provide advance written notice to any bargaining unit employee who may be required to move under this MOU, with a copy of the notice to NTEU Chapter 251. Readable floor plans for all impacted floors will be provided to all bargaining unit employees impacted by this change once the MOU is signed, and prior to implementing any office moves. Impacted employees will include all bargaining unit employees who may need to select office space necessitated by the realignment of IRS employees to CC:TEGE/making space for CC:TEGE and the implementation of flexiplace office sharing. The floor plans will be broken down by Associate office and lowest identifiable unit and will identify attorney space (A), Manager space (including executives) (M), non-bargaining unit employees who are not management (NBU), and secretarial space (S). The floor plans will also include all room numbers, identify the existing organization within the IRS Office of Chief Counsel that occupies the space, identify the space that will be held for CC:TEGE employees, identify the space that will be held for double offices for RSF and New Technology Pilot employees (hereafter called "flex doubles"), and any other double offices. With regard to the flex double offices, the floor plans will specifically indicate which such offices are available at each of the lowest identifiable units for each organization in the IRS Office of Chief Counsel.
5. The current plan is for the moves that take place based on this MOU (moves due to flexiplace office sharing and moves needed to "make space" for TEGE) will begin in October 2014. But, the moves will not take place until bargaining is completed and this MOU is signed.

#### **RULES REGARDING FLEXIPLACE OFFICE SHARING**

6. Counsel has decided (pursuant to Article 48, Section 9(B)(1) of the 2011 Counsel – NTEU Agreement) that employees physically located in the National Office in Washington, D.C. who work RSF or on the New Technology Pilot will be required to sit in a doubled office. This rule will apply to any employee currently working RSF or flexiplace under the New Technology Pilot as well as employees who go on RSF or the New Technology Pilot after this MOU is signed.
7. Flexiplace office sharing under this MOU is at the ratio of 2:1, such that a maximum of two (2) employees will be required to share an office. Before Counsel makes changes to this ratio, Counsel will provide advance notice to National NTEU and Chapter 251 and bargain over impact and implementation issues to the extent required by law and the 2011 Counsel-NTEU Agreement, or its successor.
8. Any employee currently on RSF or the New Technology Pilot may elect to terminate those particular flexiplace arrangements and retain their current office space. Prior to implementing any space moves under this MOU, the Office will notify employees and give them an opportunity to exercise this option.

9. Bargaining unit employees required to sit in a doubled office as part of flexiplace office sharing will sit in private "doubled" offices, not cubicles.
10. Each employee in a flex double will be provided with their own desk, chair, filing cabinet, computer and telephone. All Counsel employees in a flex double will have either a lockable desk or a lockable filing cabinet.
11. As a part of the office selection process, the Office will identify the "flex double" offices available in each Associate office for employees subject to flexiplace office sharing. Employees subject to flexiplace office sharing will sit in the space designated by management as a "flex double" office for their respective Associate offices, but may sit in locations other than the "lowest identifiable unit" used by their respective Associate office. For example, even if employees in Associate Office XX typically sit by branch, an attorney subject to flexiplace office sharing may be required to sit in a designated flex double office outside his or her branch.
12. If the Office designates an office as a flex double office and an employee who is not subject to flexiplace office sharing currently occupies that office, the employee currently occupying the office will have to move and will be given "bumping rights" (as explained in Article 46, Section 9 of the 2011 Counsel – NTEU Agreement).
13. Attachment 2 identifies the flex double offices in each Associate office as of the date of this MOU.

**OFFICE SELECTION AND PROCEDURES REGARDING FLEXIPLACE  
OFFICE SHARING AND "MAKING SPACE" FOR CC:TEGE**

14. Counsel management will meet with the impacted bargaining unit employees to explain the move. Different meetings will be held for each Associate office. The floor plans referred to above in Paragraph #4 will be available at these meetings and will be distributed in advance of the meetings to all bargaining unit employees. The meetings will take place in advance of the selection of offices by employees to ensure employees have sufficient time to consider the information provided to them prior to making their selections. NTEU will be invited to attend these meetings on official time.
15. At these meetings, Counsel management will identify and describe to impacted employees the "lowest identifiable unit" and the office space assigned to bargaining unit employees in each such unit as set forth in Article 46, Section 9 of the 2011 Counsel-NTEU Agreement for purposes of this planned move.
16. Counsel will explain to impacted employees that any bargaining unit employee required to move pursuant to this MOU, with the exception of bargaining unit employees required to move to a flex double office, is moving involuntarily and caused by management action which will trigger "bumping" rights within the lowest identifiable unit as set forth in Article 46, Section 9 of the 2011 Counsel-NTEU Agreement. Counsel and NTEU agree that if an employee is "bumped" under the provisions of this MOU, the employee who is "bumped" will also have bumping rights. A bargaining unit employee required to move to a flex double office can

select an office between multiple flex double offices and select which desk to occupy in an individual flex double office.

17. In the event the bargaining unit employees in the lowest identifiable unit cannot agree among themselves as to office seating arrangements, all impacted bargaining unit employees (except Secretaries) will pick offices based on SCD (service computation date) pursuant to Article 46, Section 9 of the 2011 Counsel-NTEU Agreement. In the event more than one employee has the same SCD, the employees will select office space based on coin toss or other similar method which will be observed by NTEU.
18. Employees impacted by the move will be given an opportunity to inspect the office space that they will be moving into prior to making office selections. Any deficiencies will be noted by the employee and provided to the Administrative Office for the employee's Associate Office. The Office will make any necessary repairs to ensure the office space is safe for occupancy.
19. Subsequent to the meetings set forth in # 14 above and inspection in # 18 above, impacted employees will be allowed to meet on duty time to make any office selections pursuant to the 2011 Counsel-NTEU Agreement, Article 46, Section 9 procedures and this MOU, and NTEU will be invited to said meetings on official time. SCD dates will be provided to NTEU for purposes of employees selecting office space.

**GENERAL PROVISIONS REGARDING MOVES (FLEXIPLACE OFFICE SHARING AND "MAKING SPACE" FOR CC:TEGE)**

20. Prior to the move, information will be provided to employees in writing addressing what items will be moved to a new office space and what items must remain in the employee's current office space, and how to identify items to be moved.
21. Current office phone numbers will carry over to employees' new offices with their phones.
22. Counsel management will provide burn boxes and dumpsters for a reasonable period of time (generally at least 5 workdays) prior to the planned moves to facilitate cleanup as employees decide what items they discard instead of pack.
23. Counsel management will in each Associate office schedule an all-day/no meetings/sort and dump day for employees to purge items they do not need in advance of the move. Employees will be given administrative time to participate in these activities.
24. Employees will be provided a reasonable amount of administrative time to pack and unpack their case files, research materials, personal belongings, and office equipment.
25. This is a box move for impacted employees. As such, Counsel will provide movers who will be tasked with moving employees' case files, research materials, personal

belongings, desk chairs, and small office equipment to their new office space. However, furniture will be moved if the furniture was supplied to the employee as a reasonable accommodation or if it is necessary to furnish the space with furniture because it was not being used as regular office space previously. Employees will need to identify any "reasonable accommodation" furniture to their Administrative Office in advance of the move.

26. Counsel management will provide adequate space for a water cooler, and bottles, and will identify that space prior to office selection upon request.
27. Counsel management will provide each affected employee with the keys they need to do their job (including keys to any bay where fax machines, copiers, printers or mailboxes are located and a key to a locking desk or filing cabinet in their new office space.)
28. Any personnel files or confidential files will be locked up when not in use both during the move and subsequently. Employees having problems with phones or having phone numbers moved to new offices, problems with the move of case files, research files, or other equipment, or problems with keys and locking desks or filing cabinets will be provided assistance by Counsel. Employees should contact their Administrative Office for assistance.

#### **SPECIFIC SPACE MODIFICATIONS REGARDING "MAKING SPACE" FOR CC:TEGE**

29. Counsel will assemble stacks of strong shelving (capable of holding typical moving boxes containing paper, binders, etc.) in the "vault" in Room 5210. This shelving is intended to accommodate the current boxes of files that are now stored in vacant space in CC:CORP.

#### **FUTURE FLEXIPLACE OFFICE SHARING RULES**

30. Counsel will continue the New Technology Pilot for bargaining unit employees who meet the requirements of Article 48, Section 12 of the 2011 Counsel – NTEU Agreement
31. Paragraphs 6 through 13 of this MOU explain, in part, how employees initially move to flex double offices under the MOU. As a part of that process, Counsel management designated particular offices to serve as flex doubles.
32. This section of the MOU will explain the rules for employees who go on regularly scheduled flexiplace (RSF) or the New Technology Pilot after this MOU is signed. Those rules and procedures are as follows:
  - a. Any employee at 1111 Constitution choosing to go on RSF or the New Technology pilot after the MOU is signed will sit in a flex double. This will



happen as part of the approval process for any new RSF or New Technology Pilot flexiplace request.

- b. Employees will sit in flex doubles within their own Associate office. For example, a FIP employee seeking to go on regularly scheduled flexiplace will not be asked to sit in a flex double located in space occupied by PA.
- c. If there are open flex doubles at the time an employee wants to go on regularly scheduled flexiplace or the New Tech pilot, that employee will be required to move to a flex double. The selection of flex double office space by employees is covered by Article 46, Section 9 of the 2011 Counsel-NTEU Agreement. Any such moves will be considered voluntary and the "bumping" rights of Article 46, Section 9(B) will not apply. However, an employee can select an office between multiple flex double offices and select which desk to occupy in an individual flex double office.
- d. If there is no open flex double, Counsel will either convert the employee's current office into a flex double office by adding a second desk and phone or designate a different office within the same Associate office to become a flex double office.
- e. When designating offices, Counsel management will ensure that flex double offices are at least 144 square feet and will also attempt to avoid displacing another BU employee who is not going on RSF or the New Technology pilot. Flex double designations will be based on legitimate office needs. Counsel will also provide NTEU Chapter 251 with advance notice about which offices will be designated as flex doubles. Counsel will give NTEU a reasonable period of time (at least 10 work days) to comment or ask questions before any such designation goes into place and Counsel will promptly answer any such questions prior to designating the flex doubles. However, the Office retains the discretion to designate which offices will be flex double offices consistent with the terms of this MOU.
- f. If as a result of (e) above a bargaining unit employee is required to move out of an office because it has been designated as a flex double office, the employee will be given at least ten (10) workdays notice prior to the move. This ten (10) work day notice to an employee will begin after the ten (10) work days notice to NTEU Chapter 251 in paragraph 32(e) above. Any bargaining unit employee required to move out of an office because it has been designated as a flex double office is moving involuntarily and caused by management action which will trigger "bumping" rights within the lowest identifiable unit as set forth in Article 46, Section 9 of the 2011 Counsel-NTEU Agreement.
- g. An employee's ability to begin working RSF or flexiplace under the New Technology Pilot will not be delayed pending completion of the process to move the employee to a flex double office or to convert the employee's current office into a flex double office by adding a second desk and phone.

33. An employee on RSF or the New Technology pilot who has occupied a flex double office can (under the rules set forth in Article 46 of the 2011 Counsel-NTEU Agreement) terminate such a flexiplace arrangement. If the employee does so, there is no right to immediately move to a different office and the employee's ability

to move will depend on the availability of offices at that time. The procedures set forth in Article 46, Section 9(A) and (B) of the 2011 Counsel-NTEU Agreement will govern moves to different offices. Any such moves will be considered voluntary and the "bumping" rights of Article 46, Section 9(B) will not apply. Counsel will work to promptly move an employee upon the employee's request when an office becomes available under this paragraph.

34. If additional Counsel space becomes available at the National Office in Washington, D.C. so that management no longer needs to require flexiplace office sharing under Article 48, Section 9(B)(1) of the 2011 Counsel-NTEU Agreement, the Office will notify NTEU National and Chapter 251 and will, to the extent required by law, negotiate at that time.

**FINAL MATTERS REGARDING FLEXIPLACE OFFICE SHARING AND "MAKING SPACE" FOR CC:TEGE**

35. In the event that significant or unanticipated problems or concerns develop in the course of the move and/or implementation of this MOU, Counsel and NTEU agree to notify each other and meet to discuss and attempt to resolve any problems. In the event that either party becomes aware of additional changes or unanticipated adverse impact to conditions of employment as a result of the implementation of this initiative, they will follow Article 45 of the 2011 Counsel-NTEU Agreement to give notice to the other party, if appropriate, and bargain to the extent provided by law.

36. This MOU will become effective thirty-one (31) days from execution or agency head approval, whichever occurs first.

37. This MOU will terminate when the parties enter into a successor agreement to the 2011 Counsel – NTEU Agreement.

For IRS Office of Chief Counsel:

For NTEU:

[Redacted Signature]

10/28/14  
Date

Director, Labor & Employee Relations

NTEU National Negotiator

[Redacted Signature]

10/28/14  
Date

NTEU Chapter 251 President

## **ATTACHMENT 2 – FLEX DOUBLES**

### **FLEX DOUBLES**

3525W, 3539W, 3558W, 3702W (FIP)  
4004W, 4026W, 4117W, 4118W, 4429W (TEGE)  
4143C, 4143W, 4522C, 4524C (ITA Group 1)  
4239C (ITA Group 2)  
5420C, 5420W (TEGE)  
5019W, 5316C (PSI)  
5035 bay (CORP)  
5143C, 5230W, 5236W, 5239W (PA)  
5539W (PA – additional if needed)

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## U

Unacceptable Performance



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