

COLLECTIVE BARGAINING AGREEMENT

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PREAMBLE

WHEREAS the Congress of the United States has found that the right of public employees to organize, bargain collectively and participate through labor organizations of their own choosing in decisions which affect them, safeguards the public interest, contributes to the effective conduct of public business and facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment; and

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

WHEREAS the well being of employees and efficient administration of the Equal Employment Opportunity Commission (EEOC) are benefited when employees, through the labor organizations of their choice, and employers participate jointly in the formulation and implementation of personnel policies and practices affecting employee conditions of employment; and

WHEREAS the public interest is best served through the maintenance of constructive and cooperative relationships that are based on mutual respect between labor organizations and management officials; and

WHEREAS subject to law and the paramount requirements of public service, effective labor management relations within the Federal service require a clear statement of respective rights and obligations of all Parties;

NOW, THEREFORE, consistent with the requirements of the Civil Service Reform Act (CSRA) by virtue of the following, the Parties have set forth their agreements governing the rights, duties and obligations of the EEOC, the UNION and EEOC employees.

Article 1.00 National Agreement

It is agreed that this National Agreement and any approved Local Agreements as may be executed hereunder from time to time constitute a Collective Bargaining Agreement (CBA) by and between the National Council of EEOC Locals No. 216, American Federation of Government Employees, AFL-CIO, consisting of its affiliate Locals, hereinafter referred to as the UNION, and the U.S. Equal Employment Opportunity Commission, hereinafter referred to as the EMPLOYER, pursuant to the letter and spirit of Public Law 95-454, dated October 13, 1978, otherwise identified as Title VII of Civil Service Reform Act of 1978, 5 U.S.C. §§ 7101 et seq. (CSRA).

Article 2.00 Authority

The Parties enter into this Agreement under the authority granted in Title VII of the Civil Service Reform Act of 1978, 5 U.S.C. §§ 7101 et seq., and the Certification of Representative in Case No. 22-07926 (RO), dated April 20, 1978, from the Area Administrator, Labor Management Services Administration, Washington, D.C. Office. As certified, the UNION has the sole authority and is the exclusive representative of all EEOC bargaining unit employees nationwide.

Article 3.00 Exclusive Recognition and Coverage of the Agreement

Section 3.01

The EMPLOYER recognizes the UNION, consisting of its affiliate Locals, as the exclusive representative of all employees in the unit as defined in Section 3.02 of this Article. As long as the UNION is the sole and exclusive representative, the EMPLOYER agrees that it will not meet or negotiate with any other employee organization or association concerning any matters affecting personnel policies, practices, or terms and conditions of employment.

Section 3.02

This Agreement applies to all employees in the unit, which includes all professional and nonprofessional general schedule employees, including Schedule A and wage employees of the U.S. Equal Employment Opportunity Commission nationwide. Excluded are all:

- (a) Management officials as defined in 5 U.S.C. § 7103(a)(11);
- (b) Supervisors as defined in 5 U.S.C. § 7103(a)(10);
- (c) Confidential employees as defined in 5 U.S.C. § 7103(a)(13);
- (d) Employees engaged in administering Title VII of the CSRA, as stated in 5 U.S.C. § 7112(c);
- (e) Employees engaged in Federal personnel work other than in a purely clerical capacity in accordance with 5 U.S.C. § 7112(b)(3), and
- (f) Employees as defined in 5 U.S.C. § 7112(b)(7), whose duties primarily involve investigative or audit functions (directly relating to the internal security of the Agency) which are undertaken to ensure that those who are being investigated or audited are acting honestly and with integrity.

Section 3.03

Certain provisions of this Agreement do not apply to all bargaining unit employees, as specifically denoted throughout the Agreement in those provisions.

Section 3.04

If the EMPLOYER makes the decision to exclude any position from the existing bargaining unit other than those defined in Section 3.02 above, it must notify the UNION in writing as soon as the decision is made.

Article 4.00 Dates and Duration of Agreement

Section 4.01

This Agreement shall take effect on November 4, 2013.

Section 4.02

(a) The EMPLOYER and the UNION agree that this Agreement shall serve as the Master Agreement between the Parties for all EEOC facilities. Local Agreements may be negotiated between the Field or Headquarters Office(s) and their respective Locals and shall cover all employees in the bargaining unit at the facility or office covered. Local negotiations shall be conducted for those issues which only affect one (1) District (including all offices in that District) or one (1) Headquarters office. Issues which affect only the Washington Field Office will be negotiated by the Field Office Director and the appropriate Local President. District Office Directors and Local Presidents are encouraged to use creativity and innovation to minimize such expenses. Office Directors may, at their option, elect to pay all, part or none of the UNION expenses incurred for Local negotiations.

(b) Local Agreements shall not delete, be in conflict with, or otherwise nullify any provision, policy or procedure in this Agreement or any government-wide or agency-wide rule, regulation or procedure. All Local Agreements shall be subject to the terms and enforceability of this Agreement, but shall not be effective until reviewed for conformity with this Agreement, the law and regulations by EEOC and the National Council of EEOC Locals No. 216. This review, including any modifications, must be approved in writing by the Chair and the President of the National Council of EEOC Locals No. 216 or their respective designees, prior to implementation.

(c) Reviews under Section (b), and if necessary any modifications, shall be completed within 30 calendar days of submission; otherwise, the Agreement becomes effective. If either party does not concur with the Local Agreement, the party shall notify the other Party. Either or both parties can remand the Local Agreement back to the office for revisions or renegotiation. If the Local Agreement is revised, it shall be resubmitted to the Council President and the Chair, or their respective designees for review. If the parties cannot agree locally, either party may invoke provisions of Article 7.00 Labor-Management Negotiating Procedures.

(d) National negotiations shall be conducted for those issues which affect more than one District Office and/or Headquarters Office or which involve reorganizations, reductions-in-force, furloughs, freezes on hiring and promotion or changes concerning the elements and standards of the Agency's performance evaluation system.

Section 4.03

This Agreement shall remain in effect for four (4) years from its effective date. It shall be automatically extended for one (1) year unless terminated by either Party giving the other a written notice of its intention to terminate this Agreement in whole or in part no less than 60 or more than 105 calendar days prior to (its expiration date). The Parties expressly agree that the statutory procedures provided at 5 U.S.C. §7119 shall be used to resolve any dispute concerning the negotiation of ground rules, irrespective of any notice to abrogate Article 7.00 Labor-Management Negotiating Procedures or notice to terminate the Collective Bargaining Agreement.

Section 4.04

(a) Within 90 days from the effective date of this CBA, the Chief Human Capital Officer (CHCO) and the National Council President (or their designees) shall meet and jointly review all national Memorandum of Understanding (MOUs) and local MOUs and agreements negotiated prior to the effective date of this agreement. The purpose of this review is to determine whether these agreements are consistent with the terms of this CBA, law, rules, regulations, or Executive Orders or whether they contain permissive areas of bargaining. Within 90 days following the completion of this review, the CHCO and the National Council President will issue determinations to local UNION Presidents and Field offices regarding the approval of reviewed agreements. These time limits may be extended by mutual agreement.

(b) Where National and local agreements and MOUs are determined to be inconsistent with this CBA, law, rules, regulations, or Executive Orders, or which contain permissive areas of bargaining in areas where management wishes to retain its rights, the following procedures shall apply:

(1) In the event the parties agree to modify or renegotiate, the status quo shall remain in effect until such time as Article 7.00 negotiation proceedings have been completed.

(2) However, if management determines it will rescind an agreement, Management will notify the Union in writing of the effective date of the rescission.

(3) Any such negotiations under this section shall be completed within 60 days of notice of the determination issued by the CHCO and the National Council President. However, the timeframes may be extended by mutual agreement of the parties.

(c) If an agreement which falls within Article 4.00 is not submitted for review, it shall be deemed rescinded and unenforceable by either Party.

Section 4.05

In the event that a Party decides to terminate this Agreement as provided for in Section 4.03, the following procedures shall apply:

(a) Within 10 work days of notification, the Parties shall meet to negotiate ground rules for renegotiation of the CBA. The time limit may be extended by mutual consent of the Parties;

(b) Ground rule negotiations shall be held at a site agreed upon by both Parties; and

(c) Each Party will designate a Chief Negotiator who will have appropriate collective bargaining authority.

Section 4.06

The provisions of this Agreement shall remain in full force and effect and unchanged, except in instances where the Parties mutually agree to amend, supplement or rescind provisions or in instances where regulation, law, rule or government-wide regulation or provisions of this Agreement necessitate or authorize modification.

Section 4.07

Upon the expiration of this Agreement, the EMPLOYER shall be free to modify its personnel policies, practices and general conditions of employment in accordance with Title VII of the Civil Service Reform Act, to conform to changes in government-wide rules or regulations that occurred during the contract term.

Section 4.08

The EMPLOYER and the UNION recognize that an effective relationship between the Parties requires the Parties to meet as mutually agreed and to discuss various issues or problems without surrendering or abrogating their respective rights guaranteed by this Agreement or Title VII of the Civil Service Reform Act of 1978. Any waiver of rights by either Party, and/or any waiver or amendment to this Agreement must be in writing and must be a clear and unmistakable waiver.

Article 5.00 Employee Rights and Responsibilities

Section 5.01

All employees shall have employment rights consistent with the merit system principles set forth in 5 U.S.C. §§ 2301-2302.

Section 5.02

Each employee shall have the right to form, join or assist any labor organization or to refrain from such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of this right. Such right includes the right to:

- (a) Act for a labor organization in the capacity of a duly authorized representative; and
- (b) Through authorized representatives or officers, engage in collective bargaining in accordance with the provisions of the law and this Agreement.

Section 5.03

Employees may join and participate in any organizations or associations, without fear of penalty or reprisal, and be active therein provided such participation is not prohibited by law or government-wide rules or regulations or does not create or give the appearance of a conflict of interest.

Section 5.04

- (a) Bargaining unit employees have the right to UNION representation at:

(1) Any formal discussion between one or more representatives of the EMPLOYER and one or more employees concerning any grievance or any personnel policy or practice or other general condition of employment; or

(2) Any examination of an employee in the unit by a representative of the EMPLOYER in connection with an investigation if:

(A) The employee reasonably believes that the meeting may result in disciplinary action against the employee; and

(B) The employee requests UNION representation.

Further examination of the employee at that meeting shall be suspended until a UNION Representative is given an opportunity to be present.

(b) The EMPLOYER shall inform its employees annually of their rights under this Section and provide copies of the notice to new employees upon entering on duty.

Section 5.05

Upon request from either Party, the employee or the EMPLOYER has the right to be informed of pending subjects of discussion between them.

Section 5.06

Each employee shall have the right to bring work-related matters of personal concern to the attention of appropriate officials of the EMPLOYER and/or the UNION. The Parties agree an employee will be granted a reasonable amount of official duty time for these purposes. The Parties further agree that supervisory clearance will be obtained and that such official duty time will not be abused. The employee should schedule such meetings for times which do not unduly interfere with essential Agency functions.

Section 5.07

The employee has the right to request a UNION Representative to attend meetings with, or to represent the employee before, the EMPLOYER whenever the discussion involves a subject matter for which a contractual, regulatory or statutory right for UNION representation exists. The UNION shall be given an opportunity to be present.

Section 5.08

The EMPLOYER and the UNION agree to foster a work environment which is conducive to good Employer-Employee working relationships. The prompt, orderly discussion and resolution of work-related problems are important facets of such working relationships. Therefore, when such problems and concerns arise, an employee is both free and encouraged to promptly discuss them with his/her immediate supervisor.

Section 5.09

No employee shall be required to disclose his/her religion, race, ethnic group, sexual orientation, age, disability, genetic information, or political affiliation, except as may be required in accordance with law.

Section 5.10

The EMPLOYER recognizes that employees should have appropriate workspace, tools and equipment to perform the duties of their positions. The EMPLOYER will work diligently to provide these things in a reasonable period of time.

Section 5.11

This Agreement and its provisions may not preclude an employee from exercising other grievance or appeal rights established by law, rule or regulation, except an employee waives such rights by election of the negotiated grievance procedure. Employees shall have the right to exercise any and all rights established by the provisions of this Agreement, law, rules and/or regulations without reprisal or fear thereof. The proper exercise of employee rights under this Agreement includes the requirement to follow the procedures established herein. Employees are expected to follow the procedures of applicable law, rules and regulations.

Section 5.12

The Employer agrees that when it exercises its right to search an employee's office, it will comply with government-wide laws, rules, and regulations. In such cases, the Employer will notify the employee of its actions, the reasons for the search, and identify the actions taken.

Article 6.00 EMPLOYER-UNION Rights and Responsibilities

Section 6.01

(a) The EMPLOYER and the UNION subscribe to the principle that the right of employees to organize and bargain collectively through the UNION and thereby participate in decisions which exclusively affect them, serves to:

- (1) Safeguard the public interest;
- (2) Contribute to the effective conduct of public business;
- (3) Facilitate and encourage the amicable settlement of disputes between the EMPLOYER and its employees;
- (4) Contribute to the development of modern and progressive work practices to facilitate and improve employee performance and the efficient management of the operations of the Government; and
- (5) Create positive labor-management relationships which balance and protect the rights of the employees, the EMPLOYER and the UNION.

Therefore, collective bargaining is in the public interest and will serve the good of creating a more harmonious workplace.

(b) The Parties subscribe to the principle that the rights and reservations described by this Agreement vest each with the corresponding obligation to exercise its respective rights and responsibilities in a manner which promotes these goals. The EMPLOYER, the UNION and its

Representatives, consonant with the provisions of this Agreement, pledge to work together harmoniously to pursue these goals.

Section 6.02

The Parties recognize that the right of Federal employees to bargain collectively through the UNION, as described in the provisions of this Agreement, is also subject to limitations imposed on both Parties by statute which reserves to the EMPLOYER, consistent with applicable law, rules and regulations and this Agreement, the right and authority to:

- (a) Determine the mission, budget, organization, number of employees and internal security practices of the Agency;
- (b) Hire, assign, direct, layoff and retain employees in the Agency, or suspend, remove, reduce in grade or pay, or take other disciplinary actions against such employees;
- (c) Assign work, make determinations with respect to contracting out and determine the personnel by which Agency operations shall 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) Take whatever actions may be necessary to carry out the Agency's mission during emergencies;
- (f) Determine numbers, types and grades of employees or positions assigned to any organizational subdivision, work project or tour of duty; and
- (g) Determine the technology, methods and means of performing work.

Section 6.03

Nothing in this Article shall preclude the EMPLOYER and the UNION from negotiating procedures which Management Officials of the Agency will observe in exercising any authority under this Article, or appropriate arrangements for employees adversely affected by the exercise of any authority under this Article.

Section 6.04

Any election by the EMPLOYER to discuss a subject referred to in Section 6.02 (f) and (g) shall not be a waiver of its rights as stated in Section 6.02. Moreover, the EMPLOYER expressly reserves the right to withdraw any subject referred to in Section 6.02 from discussion any time prior to agreement.

Section 6.05

The UNION and its designated Representative have the right, and shall be protected in the exercise of the right consistent with the provisions of the law and this Agreement, to:

- (a) Engage in collective bargaining;

- (b) Handle grievances and appeals;
- (c) Represent employees by being afforded the opportunity to be present at:
 - (1) Any formal discussion between one or more representatives of the Agency and one or more employees in the bargaining unit or their representatives concerning any grievance or any personnel policy or practice or other general condition of employment, or
 - (2) Any examination of an employee in the bargaining unit by a representative of the Agency in connection with an investigation if:
 - (A) The employee reasonably believes that examination may result in disciplinary action against the employee, and
 - (B) The employee requests representation.

Section 6.06

The EMPLOYER recognizes that in the lawful exercise of representational rights in accordance with statute and the terms and conditions of this Agreement, the UNION and its Officials shall be held free from penalty, restraint, retaliation or reprisal.

Section 6.07

The UNION and EMPLOYER further agree that their mutual and respective obligations to honor the terms and conditions of this Agreement include the obligation to fairly and factually represent and advise employees and managers as to their rights and responsibilities under this Agreement, statute or regulation. Where disputes arise concerning the interpretation or application of this Agreement or of applicable law or regulation, or a breach thereof is alleged to have occurred, the Parties agree to discuss the allegations and attempt informal resolution before statutory recourse of any kind is invoked.

Section 6.08

The EMPLOYER agrees to notify the UNION, as appropriate, of any proposed new directives, notices, orders, regulations or rules affecting conditions of employment in the bargaining unit. Prior to implementation of proposals, the EMPLOYER and the UNION shall meet and confer, as appropriate, in accordance with the procedures established in Article 7.00, Labor-Management Negotiating Procedures. The EMPLOYER agrees not to make any substantive changes to any existing directives, orders, notices, regulations or rules affecting conditions of employment without notification to the UNION. Prior to implementation of changes, the EMPLOYER and UNION shall meet and confer on the changes, as appropriate, in accordance with the procedures established in Article 7.00, Labor-Management Negotiating Procedures.

Section 6.09

The UNION agrees not to interfere with the EMPLOYER's operation by calling, participating in or condoning activities such as a strike, work stoppage, slowdown or unlawful picketing in connection with a labor-management dispute or hindering an employee's work performance or productivity.

Section 6.10

In exercising their respective rights or in fulfilling their respective obligations, the EMPLOYER and the UNION pledge to do so in a manner which:

- (a) Fosters a spirit of labor-management cooperation and mutual respect;
- (b) Recognizes the obligation as civil servants to prudently, judiciously, efficiently and with due regard to the need for economy, exercise the representational or managerial rights assigned herein;
- (c) Promotes effective and informed communication between supervisor and employees, which is essential to improve the Agency mission, develop human resources, enhance job satisfaction and promote amicable dispute resolution; and
- (d) Is consistent with the procedures, processes and provisions set out in the specific Articles of this Agreement.

Section 6.11

Upon written request, the EMPLOYER shall furnish to the UNION, to the extent not prohibited by law, data which is normally maintained by the EMPLOYER in the regular course of business; which is reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining; and which does not constitute guidance, advice, counsel or training provided for Management Officials or Supervisors relating to collective bargaining.

Section 6.12

In keeping with the spirit of Public Employee Recognition during the month of May, Managers and Local UNION officials are encouraged to recognize the achievements of our workforce. The EMPLOYER will make available a room at all of its facilities for use by the UNION to conduct recognition activities. Additionally, the EMPLOYER will provide all bargaining unit employees with one (1) hour of administrative leave to participate in organized recognition activities.

Article 7.00 Labor-Management Negotiating Procedures

Section 7.01

This Collective Bargaining Agreement represents the full and complete agreement between the Parties. The UNION and the EMPLOYER agree to be bound by the terms of this Agreement without regard to geographical location or organizational component.

Section 7.02

Agency rules, regulations, orders or other directives which are inconsistent with this Agreement are modified and/or superseded as of the effective date of this Agreement, until amended by the EMPLOYER to conform to this Agreement.

Section 7.03

The Parties agree to negotiate, as appropriate, with respect to the impact and implementation of changes which would substantively alter conditions of employment resulting from:

- (a) Changes in law, government-wide rules and regulations or other formal directives to which the EEOC is subject;
- (b) Changes in formal EEOC directives, regulations or orders;

(c) Changes resulting from the exercise of rights reserved to Management; or

(d) Matters specifically designated for negotiation in other Articles of this Agreement.

Section 7.04

When there is an obligation to negotiate as a result of the matters listed in Section 7.03, the Parties agree that the procedures set forth in this Article shall constitute the sole procedure for such negotiations. Time frames within this Article may be waived by mutual consent of the Parties.

Section 7.05 Procedures for Local and National Negotiations

The Parties agree that the process cited below shall not be necessary if prior agreement is reached in consultation sessions.

(a) The EMPLOYER shall notify the UNION in a timely manner, in writing, of proposed changes as specified in Section 7.03. The EMPLOYER shall also inform the UNION of the proposed implementation date, the manner of implementation and schedule, if any.

(b) If the UNION wishes to negotiate on the proposed changes, it shall notify the EMPLOYER of the UNION's specific concerns within 10 work days following notification by forwarding written proposals on all matters it wishes to discuss further or negotiate. The time limits herein may be extended (e.g., for proposed reductions-in-force or reorganization, etc.) by mutual agreement.

(c) If a negotiating session is requested and such a meeting is scheduled, the EMPLOYER shall pay the travel and per diem of one (1) UNION negotiator for national negotiations.

(d) Agreements and understandings reached in these discussions shall, at the request of either Party, be promptly reduced to writing and signed by both Parties. Such agreements or understandings shall conclude discussions on such matters as have been agreed to by the Parties.

(e) If, after discussion of the proposals, agreement cannot be reached, either Party may inform the other Party in writing that it is initiating the statutory procedures provided at 5 U.S.C. § 7119 and its implementing regulations.

Article 8.00 Use of Official Facilities

Section 8.01

The EMPLOYER will make appropriate space available in each EMPLOYER facility for confidential employee-UNION consultation, upon request by the UNION as the need arises.

Section 8.02

Upon written request by the UNION, the EMPLOYER shall make available to the UNION, where possible, appropriate space for representational meetings with the employees involved, on an as needed basis. Such requests shall be made as far in advance as possible. The Parties agree that such requests and the duration of such meetings will be kept to a minimum.

Section 8.03

The EMPLOYER will make appropriate space available in each EMPLOYER facility for the purpose of UNION meetings upon request by the Local UNION, but normally not more than once each month. In addition, upon notice and availability, the union may schedule additional meetings to address specific management proposals. The UNION will inform the EMPLOYER in advance of its desire for space. The UNION agrees to exercise reasonable care in using such space and will leave it in the same condition as it was found. Employees attending meetings under this Section will do so only during non-duty hours or while they are in a leave status. As a matter of security, the Union will provide to the Office Director the names of any individual(s) visiting the office under its auspices. The Union will ensure that all security rules and measures are observed and adhered to by the visitors. As a courtesy, visiting Union Representatives should notify the Office Director of their presence before the meeting takes place.

Section 8.04

The EMPLOYER will provide the UNION with private secured space at the Headquarters of the Council and at each facility to which a Local President is assigned. Should any Agency facility housing such space be relocated during the period of this Agreement, the EMPLOYER agrees to include a request for UNION office space in its space request to the General Services Administration.

Section 8.05

At those Agency facilities housing the Headquarters of the Council and each Local, the EMPLOYER shall provide the UNION with space, furniture, file cabinets, a telephone and equipment for use by the UNION in performing its duties. UNION Representatives have the option of securing and installing its own locks for its cabinets and drawers.

UNION Representatives shall be permitted to use the Agency's facsimile equipment, computers, printers, scanners, E-mail, voicemail, Westlaw or Lexis, copiers and the internal mail system when necessary in conducting labor-management activities. UNION Representatives shall notify the appropriate Management Official to obtain prior authorization before using the Agency's equipment. The UNION agrees that Westlaw/Lexis usage will be limited to a reasonable number of hours during the fiscal year.

The UNION agrees that it will not use the Agency's equipment to conduct any internal UNION business.

Section 8.06

The EMPLOYER agrees to make reasonable efforts to ensure that mail, messages, communications, documents, packages or other articles addressed or forwarded to the UNION or a UNION Representative are delivered without being opened. Such UNION mail, messages, communications, documents, packages or other articles must be clearly identifiable or marked "Addressee Only."

Article 9.00 UNION Representation and Official Time

Section 9.01

The EMPLOYER shall recognize and grant official time to all Representatives who have been properly designated by the UNION.

(a) UNION Representative shall mean any bargaining unit employee properly designated under this section by the UNION to receive reasonable official time to act as an agent for the UNION.

(b) Notification of Designation must be sent to the Director, Employee and Labor Relations Division (ELRD). The UNION shall specifically designate and name annually on or before October 31, the below listed UNION Representatives:

-three (3) National Representatives to exclusively perform representational activities;

-one (1) Local Representative for each District, Field, Area and Local Office generally to process grievances;

-six (6) Representatives at Headquarters generally to process grievances;

-eight (8) Local Presidents; and

-one (1) additional Representative for each Local UNION.

The UNION may designate an alternate for each District, Field, Area, Local Office and two (2) alternates for Headquarters to act in the absence or unavailability of the Local Representative. The immediate emergency, training or as agreed to by the Parties. In case of a dispute, the procedures in Article 9.04(c) shall be utilized for this purpose. alternate may not serve concurrently while the representative is on official time except in cases of

(c) When a change of Representative becomes necessary, an e-mail notice to the Director, Employee and Labor Relations Division and the appropriate Office Director will suffice. A copy of the e-mail will also be sent to the appropriate Headquarters or Field Director.

Section 9.02

(a) Official time for representational duties shall be taken into account in making work assignments to UNION Representatives. Ordinary workload will not preclude the authorization of official time. If official time clearance cannot be granted, the EMPLOYER shall provide the reason(s) for denial and the approximate date and time that it will be approved.

(b) EMPLOYER evaluations of UNION Representatives must be based upon actual time spent on their officially assigned work, adjusting standards accordingly.

(c) Employees who exclusively perform representational activities shall be presumed to be performing at an acceptable level of competence for within-grade increases.

Section 9.03

(a) Official time under this Article shall only be used to perform representational duties, and statutory functions. Upon the effective date of this Agreement, the EMPLOYER agrees to authorize the use of reasonable official time for UNION Representatives to carry out duties authorized by the Civil Service Reform Act of 1978 and this Agreement.

(b) Representational functions shall not be performed by UNION Representatives during periods when they are working overtime except in those instances where incidents occur during periods of overtime work that require the immediate attention of the UNION Representative.

(c) Union Representatives, on a flexible work schedule, may earn credit hours while they are performing representational duties on official time, including labor-management meetings scheduled or initiated by the EMPLOYER. The Union Representative will make his or her request for credit hours as soon as reasonably possible, but in no case may the request be made and approval granted after credit hours are worked.

Section 9.04

(a) UNION Representatives requesting clearance for the use of official time shall notify by e-mail their immediate supervisor or in his/her absence, an appropriate Management Official, prior to using any official time. The Union Representative shall not use official time until he/she has received e-mail approval from their supervisor or in his/her absence an appropriate management official. Management will act on the official time request at the time it is received or as soon as practicable. Use of official time will not be unreasonably denied.

(b) Upon return to his/her work station, the Union Representative shall e-mail the immediate supervisor or in his/her absence, e-mail an appropriate Management Official, of his or her return. Denials of official time shall be documented in an e-mail. The Union Representative must enter their use of official time when completing their time and attendance in QuickTime, or its successor, for approval.

(c) To assist the EMPLOYER in planning work assignments, the UNION Representative will determine with his/her immediate supervisor, two weeks ahead of time, the approximate number of hours in the next bi-weekly period that will be necessary to perform appropriate representational functions.

(d) Any disputes regarding clearance for official time or the proper use of official time which cannot be resolved locally, shall be referred to the Local President and appropriate Office Director for resolution. If the dispute is not resolved the matter may be referred to the Director, Employee Labor Relations Division and the National Council President, or may be challenged pursuant to the parties' negotiated grievance procedure or other appropriate third party procedure.

(e) Except for the National Council President, Union Representatives designated to receive 100% official time shall account for all hours spent in representational duties. A report including each specific activity and the time spent performing each will be submitted to the Director of Employee and Labor Relations Division. The parties agree to meet and determine the specific reporting time frames, process and content, within 180 days of the effective date of this agreement. Whenever Article 4.03 is invoked to renegotiate this agreement, the National Council President and the Director, Employee and Labor Relations Division agree to review the use of official time by the Union Representatives designated to receive 100% official time.

Section 9.05

Where an office has been assigned to the UNION in accordance with Article 8.00, Use of Official Facilities, all UNION activities shall be performed within the assigned space, unless

specifically invited by the EMPLOYER to a manager's office, or where the UNION and the EMPLOYER agree otherwise.

However, UNION Representatives may use minimal amounts of official time at their work station for phone calls, making appointments, etc.

Article 10.00 Voluntary Deduction of UNION Dues

Section 10.01

Payroll deductions for the payment of UNION dues shall be made from the pay of employees who voluntarily request such dues deduction.

Section 10.02

Employees desiring to have UNION dues deducted from their pay may at any time complete and sign the appropriate portions of AFGE Form 1187, Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues. Section A of the form shall be completed and certified by the President or Treasurer of each Local who shall forward or deliver it to the American Federation of Government Employees.

Section 10.03

Authorized deductions will be made each bi-weekly pay period from the pay of an employee who has requested such allotment for dues in accordance with this Agreement. It is understood that no deduction for dues will be made by the EMPLOYER in any period for which the employee's net earnings, after other deductions, are insufficient to cover the full amount of the allotment for dues.

Section 10.04

No fee will be charged by the EMPLOYER for services rendered in connection with the dues withholding program.

Section 10.05

Employees shall be entitled to revoke UNION membership once annually, on the anniversary date of their initial membership. An employee who has authorized the withholding of UNION dues may request revocation of such authorization by completion and submission to the Treasurer of the Local UNION, or its designee, of a Standard Form 1188, Revocation of Voluntary Authorization for Allotment of Compensation for Payment of Labor Organization Dues, normally 60 calendar days but no later than 30 calendar days prior to his/her anniversary date. The EMPLOYER shall promptly forward to the UNION any revocations received directly from employees.

Section 10.06

The UNION shall be responsible for ensuring that Standard Form 1187 is made available to its members and shall ensure that the forms are promptly completed and certified. The UNION recognizes its responsibility for assuring that its members are fully informed and educated concerning the program for payroll deduction of employee organization dues, its voluntary nature and the uses and availability of the required forms.

Section 10.07

All deductions of UNION dues provided for in this Article shall be automatically terminated in the event of loss of exclusive recognition by the UNION. Any individual allotment for dues withholding

shall also be automatically terminated upon separation of the employee from the Agency, promotion or reassignment of the employee to a position outside of the bargaining unit or upon the suspension or expulsion of the employee from membership in the exclusive labor organization. The deduction will be revoked at the end of the first full pay period of the month following such action.

Article 11.00 Distribution and Communication

The EMPLOYER and the UNION agree that open communications will facilitate and promote maximum labor-management cooperation and minimize misunderstandings.

Section 11.01

A copy of Title 5 C.F.R. and related guidance, and all applicable government-wide rules and regulations and all EEOC directives and orders affecting conditions of employment will be maintained at Headquarters and in each District Office. Upon request, the EMPLOYER shall make these available to the UNION, in Headquarters and all District Offices. In its other facilities, the EMPLOYER shall make any portion of these available upon request to employees or the UNION when the documents are not available electronically via the Agency's internal website (currently and otherwise referred to herein as "inSite").

Section 11.02

The EMPLOYER shall provide a copy of this Agreement to all employees in the unit and to each new bargaining unit employee, during new employee orientation. In addition, the EMPLOYER shall post this Agreement electronically on its internal website. The EMPLOYER shall invite the designated UNION Representative to attend orientation sessions conducted for new bargaining unit employees.

The EMPLOYER shall provide each Local President the name, position, grade level and expected reporting date of all individuals "selected/hired" to fill positions in the bargaining unit. Such notice shall be provided prior to the reporting date or effective date of the action, as appropriate.

Further, 100 copies of this Agreement shall be provided to the UNION and this Agreement shall be available on inSite.

Section 11.03

One space (approximately 40"x 40") on each floor of any EMPLOYER facility shall be provided for exclusive use of the UNION, in an area easily accessible and visible to employees. The UNION agrees that such space shall be used exclusively for bulletin boards and that it will install such bulletin boards in accordance with Federal regulations. UNION bulletin boards will be identified as such. Upon mutual agreement of both Parties, the UNION may also post notices in common areas.

The Parties agree that in the event that any material posted on the bulletin board(s) is considered objectionable by the EMPLOYER, the EMPLOYER shall inform the appropriate Local President or designated UNION Official. The EMPLOYER shall specify the objectionable material, the reason why it is deemed objectionable and may request its removal.

The UNION may remove challenged material from bulletin board space, pending resolution of the objectionable issue. Objectionable material means material, the publication of which violates Federal, State or local law, such as defamatory or false materials or materials which constitute an unlawful invasion of privacy.

The Parties understand that this Agreement does not constitute a waiver of any rights guaranteed by the Constitution of the United States.

Section 11.04

All written agreements entered into by the EMPLOYER and the UNION shall become effective upon the date mutually determined by both Parties. The EMPLOYER shall distribute the written agreements and documents pertaining thereto as mutually agreed upon during the negotiations of the agreement.

Section 11.05

The EMPLOYER and the UNION agree to inform each other regarding changes of UNION Officials, Representatives, and Management Officials and Supervisors in a timely manner.

Section 11.06

The locations, names and telephone numbers of the Council President and Local Presidents and Representatives shall be included in the EMPLOYER's telephone directories upon publication and/or revision and electronically on its internal website. The UNION shall provide the above information to the EMPLOYER in a timely manner. At the request of the UNION, the EMPLOYER will update the UNION's directory information on the internal website up to three times a year.

Section 11.07

The EMPLOYER shall inform each new employee upon entrance on duty of the UNION's exclusive recognition by providing a copy of this Agreement.

Section 11.08

The EMPLOYER shall in October of each year furnish to the UNION a list of bargaining unit employees including grade, series and location of each.

Section 11.09

Vacancy announcements shall be posted on the agency's internal website. The President of the Local in which the vacancy occurs will be notified by electronic mail.

Section 11.10

Bargaining unit employees will be provided a reasonable amount of duty time to participate in UNION sponsored training on the new collective bargaining agreement.

Section 11.11

All documents referenced in the CBA as being posted on inSite will be found through the Employee Services tab.

Article 12.00 Employee Debts

Section 12.01

Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations including, but not limited to, those recognized in Executive Order No. 12953 (Actions Required of all Executive Agencies to Facilitate the Payment of Child Support), 29 C.F.R. Part 1650, and Federal, State, or local taxes that are imposed by law. For purposes of this Article, a just financial obligation includes any financial obligation reduced to judgment by a court or by a State agency authorized to issue income withholding notices pursuant to a State or local law. In good faith means an honest intention to fulfill any just financial obligation in a timely manner. In the event of a dispute between an employee and an alleged creditor, this Article does not require the Agency to determine the validity or amount of a disputed debt that has not been reduced to judgment or to collect a debt that has not been reduced to judgment on the alleged creditor's behalf.

Section 12.02

The Parties recognize that 5 C.F.R. Part 179-Claims Collection Standards, Part 581-Processing Garnishment Orders for Child Support and/or Alimony, Part 582-Commercial Garnishment of Federal Employees' Pay, and Part 835-Debt Collection, pertain to the garnishment of Federal employees' pay for just financial obligations. Upon request, the appropriate regulations or EEOC Order will be made available to the employee.

Section 12.03

Unless otherwise required by law, government-wide rule or regulation, employee debts will not be the sole basis for action by the Agency and any such action shall be taken in accordance with applicable law, rules and regulations. The parties recognize that the EEOC Personnel Security Handbook contains relevant and appropriate guidance, including mitigating factors. The Handbook will be posted on inSite.

Article 13.00 Employee Claims for Personal Property Damage

All claims for loss or damage to personal property arising incident to employment shall be filed by, or on behalf of, the employee in accordance with the Military Personnel and Civilian Employees Claim Act of 1964, as amended, 31 U.S.C. §§ 3721, *et seq.*, and the appropriate EEOC Order(s) (currently, EEOC Order No. 670.001). Upon request, the appropriate regulation and/or EEOC Order(s) will be made available to the employee.

Article 14.00 Filling of Vacancies and Merit Promotion

Section 14.01

This Article gives bargaining unit employees an opportunity to receive fair and appropriate consideration for jobs in the bargaining unit in the competitive service.

Section 14.02

Hiring and promotions shall be effected only on the basis of merit and qualifications. Where appropriate, the EMPLOYER shall give due consideration to work-related experience that is

qualifying for the announced position that is obtained from any source. Such experience may be gained as a result of an employee's official UNION duties.

Section 14.03

Where the EMPLOYER determines the need to consider applicants for bargaining unit positions from outside the Federal service, it will post those vacancies simultaneously in accordance with the appropriate Sections of this Article as it undertakes outside recruitment efforts. Merit promotion announcements shall be posted for a minimum of seven (7) work days. At the request of the Selecting Official, the period of posting may be extended to a maximum of fifteen (15) work days.

Section 14.04

The area of consideration for positions at GS-13 and above is EEOC-wide. For positions at GS-12 and below, EEOC Headquarters shall be the area of consideration for vacancies at Headquarters. In the Field, the area of consideration shall be the EEOC Offices (District, Field, Area and Local) in the District where the vacancy occurs. When a vacancy is announced under the Merit Promotion Plan, the certificate of eligibles will be forwarded to the Selecting Official. The certificate shall include the names of at least three (3) qualified candidates when available. Where less than three (3) candidates are available, the area of consideration may be expanded.

Section 14.05

A promotion certificate will not have a life of more than (twenty-five) 25 calendar days. The life of a certificate may be extended beyond 25 calendar days by the CHCO.

Section 14.06

Copies of vacancy announcements will be posted electronically on the Agency's internal website and through the internet. The EMPLOYER will also notify all district employees by e-mail of all district announcements within their particular district. All announcements shall contain the following:

- (a) Name and address of issuing office; announcement number; opening and closing date; EEOC or Office of Personnel Management (OPM) title, series code and grade; salary range; organizational location; duty station and area of consideration;
- (b) Statement regarding civil service status;
- (c) If consideration is to be restricted to EEOC employees, a statement to that effect;
- (d) A succinct description of the major duties;
- (e) A digest of the qualification requirements, including any selective factors;
- (f) Percentage of travel required or whether no travel is required;
- (g) A list of core competencies and evaluation method;
- (h) Whether the position has known promotion potential and a subsequent career promotion from it is permissible without further competition;
- (i) An equal employment opportunity statement;

- (j) How to apply and what forms to submit;
- (k) The number of positions to be filled and their location;
- (l) A statement on the availability of a Schedule A appointment for individuals with disabilities, where appropriate;
- (m) Whether or not the position is a bargaining unit position; and
- (n) A statement that advises applicants that failure to provide the required information will result in an applicant not receiving consideration.

Section 14.07

Candidates for a position are all appropriate applicants who apply for the specific vacancy on or before the closing date of the announcement.

Section 14.08

A qualification standard may not be modified after the promotion process is underway. If a qualification standard must be modified, the promotion process should be canceled and applicants notified.

Section 14.09

The EMPLOYER may not use a written test in promotion, transfers or other placement actions, including training, unless the test and testing procedures comply with the Uniform Guidelines on Employee Selection Procedures and OPM guidelines on how, when and by whom written tests may be used.

Section 14.10

To apply for a position, an employee must submit a resume and any other documents stated on the vacancy announcements identifying the position(s) for which he/she is applying. It is the responsibility of the employee applying for a specific vacancy to keep his/her record of training, experience, awards, etc., up to date by the closing date of the announcement. Finalists for vacancies at EEOC who have met all qualification requirements will be asked to complete OF-306, Declaration for Federal Employment, so that their suitability for the position being filled can be determined.

Section 14.11

Minimally qualified candidates will be those who meet the appropriate OPM Qualification Standards Handbook requirements contained in the vacancy announcement. Each qualified candidate will be evaluated against evaluation criteria specified in the vacancy announcement. Candidates referred for selection shall be listed in alphabetical order. Applicants found not qualified will be so notified.

Section 14.12

The evaluation process shall be based upon a comparison of the qualified candidates' qualifications against a set of job-related criteria that have been developed for the position to be filled. A job analysis shall be developed by the EMPLOYER for the position to be filled. It shall specify how each of the competencies and other characteristics will be measured and the crediting levels for each. The plan must equate the quality of candidates' possession of essential competencies to specific credit levels.

Section 14.13

Selecting Officials at their discretion may interview candidates. However, if one (1) candidate on a certificate is interviewed, all other candidates on that certificate must be interviewed. This process applies to a merit promotion certificate only. Candidates in a different geographic location from the Selecting Official may be interviewed by telephone or by an authorized representative of the Selecting Official in the geographic area in which the candidate is located.

Section 14.14

Upon request, an employee not certified shall be informed by the personnel office as to the reason(s) for his/her non-certification. Upon request, an employee not selected will be informed by the Selecting Official of the specific reasons for his/her non-selection. If the EMPLOYER determines that the candidate is qualified, the candidate shall receive reconsideration for the position before the area of consideration is expanded.

Section 14.15

An employee is entitled to see, upon his/her request, all documents relating to that employee which were used in the selection process.

Section 14.16

In evaluating candidates for certification, type and quality of experience and/or education, or a combination of both, must be considered.

Section 14.17

Employees selected shall be released as soon as possible from their positions, normally not later than three (3) weeks after final selection. A maximum of thirty (30) calendar days may be permitted when mutual agreement is reached between the releasing and receiving office. If the employee must be held beyond the thirty (30) calendar days, the EMPLOYER shall provide a written explanation to the employee as to the reason(s) why he/she will be held and when he/she will be released. Each employee is responsible for giving his/her supervisor at least a two (2) week notice of his/her intent to voluntarily vacate a position.

Section 14.18

Management will advise the successful applicant of his/her selection.

Section 14.19

Competitive placement procedures shall apply to the following types of personnel actions concerning bargaining unit positions:

- (a) Promotions, unless excluded by Section 14.20;
- (b) Temporary promotions for more than 120 calendar days. A temporary promotion may be made permanent without further competition, provided it was originally made under competitive procedures and all candidates were aware that it could lead to a permanent promotion;
- (c) Selection for details over 120 days to higher graded positions or to positions with known promotion potential greater than the employee's present position. Service during the preceding 12 months under all details to higher graded positions and temporary promotions is included when computing the one 120 day period;

- (d) Selection for formal training required for promotion. Selection for training must be competitive if the training is given to prepare an employee for advancement and is required for promotion;
- (e) Reassignment or demotion to a position with greater promotion potential than the position previously held;
- (f) Transfer to a higher graded position; and
- (g) Reinstatement to a permanent or temporary position at a higher grade than the last grade held in a non-temporary position in the competitive service.

Section 14.20

Competitive procedures do not apply to the following personnel actions. However, these actions will be accomplished in accordance with the provisions of Section 14.02 of this Article:

- (a) A promotion resulting from upgrading a position, without significant change in the duties and responsibilities, due to issuance of a new classification standard or the correction of an initial classification error;
- (b) A position change permitted by reduction-in-force regulations 5 C.F.R. Part 351;
- (c) Career promotions:
 - (1) A promotion without current competition, when at an earlier stage, an employee was selected from a civil service register or under competitive procedures for an assignment intended to prepare the employee for the position being filled (the intent must be made a matter of record and career-ladders must be documented in the promotion file);
 - (2) A promotion resulting from an employee's position being reclassified at a higher grade because of added duties and responsibilities, provided the new position is clearly a successor to the former position and no additional position is created as a result of the promotion; and
 - (3) A career-ladder promotion following non-competitive conversion of a cooperative education student, veteran's readjustment appointee, Presidential Management, Intern or other authorized program or action.
- (d) A change from a position having known promotion potential to one having no higher potential than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service and did not lose because of performance or conduct reasons;
- (e) Details to a higher graded position or temporary promotions for up to 120 calendar days;
- (f) Re-promotion to a grade or position from which an employee was involuntarily demoted without personal cause and not at his or her request;
- (g) Promotion of a candidate not given proper consideration in a competitive promotion action;

- (h) Promotion as a result of negotiated settlements of formal EEO complaints or grievances;
- (i) Persons with a disability condition converted to competitive status pursuant to Executive Order No. 12125;
- (j) Reinstatement to a permanent or temporary position at the same or lower grade with no greater promotion potential than the previous grade held in a non-temporary position in the competitive service; and
- (k) Any other exceptions provided by law, civil service rule, or regulation found at Title 5 C.F.R.

Section 14.21

The EMPLOYER shall maintain a temporary record of each promotion or selection made under this Article and upon request shall make the record available to the UNION. This record shall be maintained for two (2) years after the date of selection or two (2) years after the announcement closes if no selection is made. Files subject to EEO complaint investigations or to grievances must be maintained until the case is resolved. At a minimum, the record shall include the information below, where applicable:

- (a) Identification of the position;
- (b) Description of the method used to locate and identify candidates;
- (c) Qualification standards used;
- (d) Evaluation methods and system for combining evaluations to obtain final ratings;
- (e) Evaluations of the candidates (including supervisory appraisals, test scores, etc.);
- (f) Names of candidates as they appeared in the final ranking;
- (g) Names of candidates who were in the group from which selection was made; and
- (h) Name of employee(s) selected.

Section 14.22

Although not covered by the other Sections of this Article, when necessary, bargaining unit Schedule A Attorney vacancies shall normally be posted for seven (7) work days. At the request of the Selecting Official, the period of posting may be extended. Announcements must receive sufficient publicity so that employees within the unit shall have an opportunity to learn of the vacancies and to apply. Applications received from employees within the unit shall receive impartial and appropriate consideration along with all other qualified applicants for vacancies and shall be referred to the Selecting Official in alphabetical order.

Article 15.00 Reassignment, Details and Temporary Promotions

Section 15.01

A reassignment means a change of an employee, while serving continuously within the same agency, from one position to another without promotion or demotion.

Section 15.02

When an employee is reassigned to a position with a different performance plan, the employee shall be provided a copy of the new performance plan. The employee must perform under the new performance plan for at least 90 calendar days before he/she can be appraised.

Section 15.03

If an individual with a disability is reassigned, reasonable accommodations must be provided in the new work setting in accordance with Article 21.00 Equal Employment Opportunity.

Section 15.04

A detail is the temporary assignment of an employee to the duties of a different position or unclassified duties for a specified period of time, with the employee returning to his/her regular duties at the end of the detail.

Section 15.05

The EMPLOYER shall notify an employee in writing whenever possible prior to a detail or reassignment, except when details do not exceed five (5) consecutive work days. When a situation necessitates an emergency detail, such written notice shall be provided as soon as possible after the effective date of the detail. Upon request, the EMPLOYER shall meet with the employee and explain the reasons for the detail or reassignment.

Section 15.06

The EMPLOYER may use details when:

- (a) A temporary shortage of personnel exists;
- (b) The volume of work suddenly increases and interrupts the workflow;
- (c) An employee is on extended leave or leave without pay;
- (d) Other conditions of a special need arise; or
- (e) Requested by an employee.

Section 15.07

For details of thirty (30) days or longer, management shall solicit volunteers by providing notice of the detail to all employees within the Headquarters office/district, including a general statement of the duties the employee is expected to perform.

Section 15.08

Details in excess of thirty (30) calendar days shall be recorded on a SF-52, Request for Personnel Action. A copy of the SF-52, including a statement of the duties to which detailed, shall be furnished to the employee and a copy placed in the employee's electronic Official Personnel Folder (eOPF).

Section 15.09

If an employee's detail exceeds 120 calendar days, the EMPLOYER shall furnish the employee with a copy of an accurate classified position description or a statement of unclassified duties.

Section 15.10

A temporary promotion is the change of an employee on a temporary or time limited basis (1) to a position at a higher grade level within the same job classification system and pay schedule or (2) to a position with a higher rate of basic pay in a different job classification system and pay schedule. Temporary promotions shall be effectuated in accordance with Article 14.00, Filling of Vacancies and Merit Promotion, and in accordance with applicable laws, rules and regulations.

Section 15.11

If the EMPLOYER requires the duties of a higher graded position to be performed for more than 120 calendar days, competitive merit promotion procedures will be used to temporarily promote the selected employee. Service during the preceding 12 months under all details to higher graded positions and temporary promotions are included when computing the 120 day period.

Section 15.12

The EMPLOYER agrees that any employee detailed or who is otherwise authorized or required to perform the functions of any higher graded position for 60 calendar days or more shall be temporarily promoted to the position to which detailed and shall be paid at the rate of the higher graded position from the 61st day to the end of the detail or the 120th day, whichever comes first.

Section 15.13

The EMPLOYER is responsible for controlling the duration of details and assuring that details do not compromise the principles of the merit system.

Section 15.14

Prior to mass reassignments in Headquarters, Washington Field Office, District, Area and/or Local Offices affecting the working conditions of employees, the EMPLOYER shall advise the UNION and provide the UNION with the opportunity to negotiate the impact and implementation of the change.

Article 16.00 Career-Ladder Promotions

Section 16.01

A career ladder is a series of levels of increasing difficulty in the same line of work through which an employee may progress from the entrance level to the level of full performance. Career advancement is the intent and expectation of the Career-Ladder System. However, career ladder promotions are not automatic. Nothing in this Article shall be construed to require Management to promote, when in the EMPLOYER's sole discretion and in accordance with applicable law, rule, regulation or this Agreement, the circumstances do not warrant such action.

Section 16.02

In order to effect a career ladder promotion of an employee, the supervisor must certify that:

- (a) The employee has a "fully successful" or higher rating of record;

- (b) The employee has not received less than a "fully successful" rating on a critical element that is also critical to the performance at the next higher grade;
- (c) The employee meets the applicable qualifications requirements of the OPM Qualifications Standards Handbook, and if applicable, time-in-grade requirements;
- (d) The employee has demonstrated the ability to perform at the next higher grade; and
- (e) The employee is performing at least at the "fully successful" level at the time of his/her eligibility for a career ladder promotion.

Section 16.03

At least ninety (90) days prior to an employee's eligibility date, if the supervisor determines that the employee is not going to be promoted, the supervisor will advise the employee of the reason(s) a promotion will not be recommended as set forth in Section 16.02. The supervisor will provide the employee with a copy of the position description for the higher graded duties. In addition, the supervisor will advise the employee what he/she must do to meet the requirements for the career ladder promotion. When the employee has met the requirements for the career ladder promotion, the employer will promptly notify the employee in writing or by e-mail of their eligibility for promotion. A supervisor's failure to provide such notice at least ninety (90) days prior to the employee's eligibility date shall not be a reason for granting a career ladder promotion.

Article 17.00 Employee Education, Development and Training

A. Education, Development and Training

Section 17.01

The EMPLOYER and UNION agree that an investment in employee education, development, and training is of primary importance in creating a high performing Agency and enabling all employees to reach their full potential. The EMPLOYER and UNION further agree the principle objectives of such Education, Development and Training efforts will be to:

- (a) Improve organizational performance at any appropriate level in the agency as determined by the head of the agency, including training that:
 - (1) Supports the agency's strategic plan and performance objectives;
 - (2) Improves an employee's current job performance;
 - (3) Allows for expansion or enhancement of an employee's current job;
 - (4) Enables an employee to perform needed or potentially needed duties outside the current job at the same level of responsibility; or
 - (5) Meets organizational needs in response to human resource plans and reengineering, downsizing, restructuring, and/or program changes.

- (b) Provide individual and group training, retraining and developmental opportunities to enhance on-the-job skills and abilities of employees which lead to personal development;
- (c) Publish and disseminate information concerning skill training programs offered by the Agency to all employees by posting in a prominent place on inSite, to include criteria for eligibility and the application process, if any;
- (d) Promote the sharing and exchange of training materials, information and techniques;
- (e) Inform employees of the training opportunities available within the broader Human/Civil Rights Community and to make available to employees the opportunity to participate in and gain the benefits of these training programs whenever practical or feasible; and
- (f) Give fair and equitable consideration of all eligible applicants consistent with merit systems principles, pursuant to 5 U.S.C. 2301 (b) (1) and (2).

Section 17.02

Each employee is responsible for applying reasonable effort, time and initiative to increase his/her career potential through self-development and training. Employees are encouraged to take advantage of various types of training programs, and to present reasonable suggestions concerning training needs and requests to their supervisors.

Section 17.03

If at any time during the performance appraisal cycle, an employee's supervisor determines that training directly related to the employee's job is necessary for successful performance, the supervisor shall meet with the employee and discuss training needs and alternatives. The supervisor will document the discussion, including applicable decisions, and provide a copy to the employee. Consistent with the agency's needs and resources, the EMPLOYER shall provide that employee with appropriate training. This does not preclude serious consideration of training requests when such training would result in better organizational or individual performance.

Section 17.04

The EMPLOYER shall post on EEOC office bulletin boards, including, when received in computer compatible format, electronic mail, the EEOC on-line recruitment system, internal website, Local Area Network Systems (LANS) and Wide Area Networks (WANS), information concerning training and educational programs as soon as possible after the EMPLOYER has been notified of such training. Where the EMPLOYER requires the employee to attend training courses or sessions, the employee shall be given reasonable notice, normally no less than two (2) weeks. Nomination and selection for training and career development programs and courses shall be made in a fair, impartial manner and consistent with the EMPLOYER's needs and resources.

Section 17.05

When the employee timely requests training in accordance with the Individual Development Plan (IDP) Training Funding Procedure, or via any other appropriate mechanism, the EMPLOYER shall make every attempt to notify the employee at least one (1) week prior to the start of the training whether or not the request is approved.

Section 17.06

An employee who has been approved for a long-term training program shall normally be granted duty time to participate in the program. Such long-term training must be determined by the EMPLOYER as contributing to the mission of EEOC and the justification must include the new or expanded duties the employee shall perform, upon his/her return, as a result of training. Generally, long-term training is used when:

- (a) The needed set of knowledge or skills requires a comprehensive study program which could not be accomplished by a series of unconnected short courses;
- (b) The time span for acquisition of the knowledge or skill is such that a concentrated long-term program is most feasible; and,
- (c) The set of knowledge or skills is so complex, new or unique that it could not be readily obtained on a short-term basis from any available Agency or interagency or non-government source.

Section 17.07

Before the EMPLOYER provides duty time and/or pays funds for an employee's long-term training in a non-government facility, the employee must agree in writing to a continued service agreement pursuant to applicable laws and regulations.

Section 17.08

The EMPLOYER recognizes the need to provide training resources for all of its employees. Consistent with budgetary resources, the EMPLOYER will provide and/or make available job-related training for each employee relating to the performance of his/her duties, normally a minimum of forty (40) hours each fiscal year. Training is not limited to formal class room training and may include on-the-job training, mentoring, Employee Development Center courses and other informal methods.

Section 17.09

Supervisors will meet with their employees on an annual basis to jointly develop or revise the employee's Individual Development Plan. Training can be performance and career development related, and can include any combination of peer training, on-the-job training, mentoring, including peer mentoring, team leader development programs, classroom training, online training, etc, as appropriate. Employees are expected to take advantage of on-the-job training and to exercise initiative in taking advantage of other types of training programs, realizing that advancement depends on self-development.

Section 17.10

Documentation of all formal training shall be maintained by Office of the Chief Human Capital Officer (OCHCO) in accordance with OPM procedures. Employees are encouraged to maintain a record of training for his/ her use when applying for other positions.

Section 17.11

The EMPLOYER shall grant official time, upon written request, to UNION Representatives to attend UNION-sponsored labor relations training provided that the Parties will derive benefit from such training.

(a) Official time for attendance at UNION-sponsored training shall be limited to 40 hours of training per UNION Representative per fiscal year. Such hours cannot be transferred among UNION Representatives.

(b) UNION Representatives shall submit requests for use of official time to attend UNION-sponsored labor relations training to the appropriate District Director(s) or Headquarters Office Director(s), or Washington Field Office Director, at least fifteen (15) work days before the training is scheduled to begin. The UNION Representative must also submit a copy of the training agenda and/or course description at the same time a request for use of official time is submitted. The UNION Representative is responsible for providing the appropriate director(s) with sufficient information concerning the training curriculum so that the appropriate director(s) can determine that the training relates to matters within the scope of the Civil Service Reform Act of 1978. Any dispute concerning the use of official time for training will be resolved in accordance with Article 9, Section 9.04(c). The fifteen (15) day notice requirement may be waived by mutual agreement of the Parties. The appropriate director(s) will respond to the request in writing within three work days following the date of receipt of the request. The UNION shall bear any and all costs associated with such UNION-sponsored training.

Section 17.12

The EMPLOYER agrees to consider all employee requests for leaves of absence, up to one (1) year, for the purpose of professional development. Such requests shall be approved consistent with the EMPLOYER's needs and resources, if it complies with applicable laws, rules and regulations, and if it is determined by the EMPLOYER to be in the interest of the Government.

Section 17.13

The EMPLOYER may excuse employees to attend relevant continuing legal education courses, conferences, or meetings with no charge to leave or pay when it is determined that attendance is in the interest of the EMPLOYER.

Section 17.14

The EMPLOYER will normally consider requests for training and development financial assistance. The EMPLOYER will reimburse employees who have received prior approval through and in accordance with the IDP Training Funding Procedures or a similar process. The approval and reimbursement of such requests are contingent upon the availability of funds.

B. Staff Development Enhancement Program

Section 17.15

The EMPLOYER and UNION agree that it is the policy of the EEOC to provide career development opportunities, and support services for the education, training and personal development for employees in order to build and support an agency workforce capable of achieving agency mission and performance goals and facilitating continuous improvement of employee and organizational performance. The EEOC shall maintain a Staff Development Enhancement Program which empowers Commission staff to:

- (a) Take more responsibility for their performance and development;
- (b) Prepare and advance themselves to meet workforce changes resulting from the Commission's continuing technological advancements; and

(c) Succeed and remain productive in a streamlined and re-engineered organization, with the concomitant organizational and operational realignments that may follow.

Section 17.16

The Staff Development Enhancement Program will offer up to six (6) slots a year for EEOC employees who demonstrate the potential to grow and assume more complex job responsibilities. The program will offer training and developmental opportunities designed to address the staffing needs of the EMPLOYER. Each year the career development opportunities will be determined based upon the Agency's overall staffing needs and any budgetary constraints. Within 120 days of effective date of the effective date of this CBA, the parties agree to review and update the SDEP.

Section 17.17

The EMPLOYER may use the Staff Development Enhancement Program to fill any positions in Headquarters and the Field. Once the EMPLOYER identifies the target position(s), the staff development positions will be advertised nationally via INTRANET and the EEOC on-line recruitment system. The EMPLOYER will develop qualification and selection criteria for participation in the Staff Development Enhancement Program. The candidate selection process will be developed with input from the UNION. If a selection requires geographic relocation, the selectee will bear all costs.

Section 17.18 Selectees under the Staff Development Enhancement Program will receive a two (2) year Individual Development Plan (IDP). The Office Director or District Director will be responsible for assuring the IDP and mentoring are effectively implemented. The IDP will identify the employee's training and developmental needs necessary to successfully perform in the target position and will specifically identify developmental activities designed to meet those needs. Developmental activities may include e-learning, on the job training, mentoring and other formal or informal training as appropriate.

C. E-Learning and the Employee Development Center

Section 17.19

The EMPLOYER and the UNION recognize that the Employee Development Center (EDC) provides EEOC employees access to on-line training programs available to improve current job skills, as well as to provide developmental opportunities in support of career enhancement goals.

Section 17.20

The EEOC will fund the E-Learning System, currently referred to as the Employee Development Center (EDC) contingent upon availability of funds and the level of demonstrated interest in, and usage of the program.

Section 17.21

While the Employee Development Center allows EEOC employees 24 hour access to training courseware, training that is required by an approved IDP, Performance Improvement Plan, law or government- or agency-wide rule or regulation will be scheduled during duty hours.

Section 17.22

All EEOC personnel will be registered on the EEOC Learning Management System (LMS) through which Individual Development Plans (IDPs) may be developed and training will be tracked and monitored.

Section 17.23

The EMPLOYER will continue to fund the E-Learning System, currently referred to as the Employee Development Center (EDC) as part of the LMS, contingent upon availability of funds and the level of demonstrated interest in, and usage of the program.

In order to be registered onto the EDC, an employee must submit a request to OCHCO via tedd.request@eec.gov containing an Individual Development Plan, signed by the employee and his/her supervisor. The IDP must contain at least three courses available from the EDC online learning provider.

Because of the limited number of full courseware slots available, the EMPLOYER will admit employees into the EDC Program based on the following priorities:

- (a) Employee has made a written request to OCHCO/TEDD for admission into the EDC Program and developed an Individual Development Plan (IDP) with his/her supervisor;
- (b) Employee has made a written request to OCHCO/TEDD for admission into the EDC Program but does not have an IDP; and
- (c) Employee's supervisor/manager designates the employee for participation in the EDC Program.

Upon receipt of a proper request from an eligible employee, OCHCO will register the employee with the EDC if slots are available. Employees will have access to the courseware upon admittance and registration by OCHCO.

All EEOC employees serving under career or career-conditional appointments are eligible to participate.

Each employee granted admission to the EDC Program shall periodically be required to provide information to EEOC for purposes of course and system evaluation. All employees registered with the program must complete at least three courses in 12 months to remain eligible for participation in the EDC program.

In order to accommodate Supervisor-Required Training or training to address PIPs, five (5) slots will be reserved for individuals for this purpose, to be determined solely by the EEOC management. Allocation and use of these slots will be administered by OCHCO.

Five slots shall be reserved for allocation by OCHCO/TEDD.

Each new EDC student will receive an individual identification name and password from the EDC website. The individual identification and password should not be shared with any unauthorized users.

Section 17.24

In order to provide sufficient usage and interest data, all students are encouraged to use the EDC and may use EEOC equipment at the workstation as follows:

Employees and their supervisors will meet to determine scheduled time, up to four (4) hours of duty time per pay period, to access job related or approved IDP courses from the employee's workstation. The limit on duty time excludes any mandatory training courses required by the supervisor or the EEOC.

Consistent with Headquarters and District Office policies and procedures, employees may use EEOC equipment during non-duty hours to access the EDC for non-work related or non-IDP courses. Consistent with EEOC policy regarding use of laptops and portable computer equipment, employees may also arrange to use EEOC computers to access the EDC away from the office. The EEOC will provide instruction to all employees on accessing the internet through the EEOC's laptop and portable computer equipment.

Normally, Bargaining Unit Employees shall not be required to use the Employee Development Center or take online training courses except as mandated by law, rule or regulation (e.g., No Fear Act). However, Supervisors/Managers may require Employees to take specific courses online as part of a training plan or an official Performance Improvement Plan (PIP). Under such circumstances, the courses will be at no cost to the employee and the employee will be provided sufficient duty time to complete the training. In cases where the employee is required to take a course pursuant to a performance improvement plan, "sufficient duty time" shall not be limited by any prior agreements between the Parties concerning the use of duty time to complete training courses.

Section 17.25

Employees with access to the internet may access the E-Learning System 24 hours per day for purposes of taking courses. No credit time, compensatory or overtime will be granted for purposes of participating in the EDC during non-duty hours, unless required and preauthorized by the employee's supervisor pursuant to applicable overtime rules and regulations for work related courses.

Section 17.26

With exception of funding and changing contract providers, the EMPLOYER agrees to meet and confer with the Union, prior to making substantive changes to the EDC process.

Section 17.27

Provisions of this article shall not in any way impact on the online learning slots purchased by the Office of Information Technology for the purpose of complying with Federal IT security regulations, processes and procedures.

D. Mentoring Program

Section 17.28

All employees are encouraged to volunteer to participate in the Agency's formal mentoring program as a mentor or mentee and shall receive fair consideration. The application will be posted in a prominent place on inSite and announced via e-mail.

Section 17.29

Participants will be given a minimum of two (2) to four (4) hours per month working in consultation with their partner for developmental purposes for the 12 month period.

Section 17.30

Training and follow-up meetings can be via webinar, teleconference or face-to-face meetings.

Section 17.31

Participants shall have access to the Agency's technical equipment to facilitate training and meetings.

Article 18.00 Within-Grade Increases

Section 18.01

Pursuant to 5 U.S.C. § 5335 and 5 C.F.R. § 531.404, an employee shall receive a within-grade increase (WGI) subject to the following:

- (a) Completion of the appropriate waiting period;
- (b) A determination that the employee's work is of an acceptable level of competence; and
- (c) The employee has not received an equivalent increase during the waiting period.

Section 18.02

For within-grade increase purposes, "acceptable level of competence" means job performance at or above the "Fully Successful" level.

Section 18.03

Employees shall be informed of the specific performance requirements that constitute an acceptable level of competence. The method of providing this information shall be the employee's performance plan.

Section 18.04 Basis of Determination

- (a) The basis for a determination of acceptable level of competence shall be the employee's rating of record that was assigned no earlier than the most recently completed appraisal period.
- (b) If the rating of record assigned no earlier than the most recently completed appraisal period is not consistent with the employee's current performance, a new rating of record shall be prepared for this purpose. Failure to provide a new rating of record prior to denying the WGI shall not be a reason for granting the within-grade increase.

Section 18.05 Delay in Determination

- (a) An acceptable level of competence determination must be delayed and the within grade increase postponed when either of the following applies:
 - (1) The employee has not had ninety (90) days to demonstrate acceptable performance because the employee has not served under his/her performance plan for at least ninety (90) calendar days and has not received a performance rating in any position within ninety (90) calendar days before the end of the waiting period; or
 - (2) The employee has been reduced in grade because of unacceptable performance to a position in which he/she is eligible for a within-grade increase or will become eligible for a within-grade increase within ninety (90) calendar days of the effective date of the reduction-in-grade.

(b) When a within-grade increase is postponed under this Section, the employee shall be informed that the determination is delayed, that the rating period is extended and what the requirements are for "Fully Successful" performance.

(c) If at the end of the extended rating period, the employee's performance is determined to be at an acceptable level, the within-grade increase must be granted retroactively.

Section 18.06 Notice of Positive Determination

An employee whose performance has been determined to be at an acceptable level of competence shall be notified of this determination by means of a Standard Form 50, Notification of Personnel Action, as soon as possible after completion of the requisite waiting period.

Section 18.07 Notice of Negative Determination

When the supervisor determines that the employee's work is not at an acceptable level of competence, the negative determination shall be communicated to the employee in writing as soon as possible after completion of the waiting period, and shall contain, at a minimum, the following:

- (a) The reasons for the negative determination;
- (b) The steps the employee must take to improve performance in order to be granted a within-grade increase;
- (c) A statement that the employee may request reconsideration of the negative determination by the District Director for Field employees, or the Program, Service Area or Office Director, as appropriate, for Headquarters employees, within 15 calendar days after receiving the notice of negative determination by filing, in writing, a request which states the specific reasons for contesting the negative determination and the factual evidence and documents supporting the reconsideration;
- (d) A statement that the employee may have a UNION Representative assist in presenting the reconsideration request;
- (e) A statement that the employee will be allowed a reasonable amount of duty time to prepare the request; and
- (f) A statement that the employee and his/her Representative may examine and, upon request, obtain a copy of the negative determination file.

Section 18.08 Reconsideration File

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

- (a) The written negative determination and the basis therefore;
- (b) The employee's written request for reconsideration;
- (c) The report of investigation when an investigation is made;

- (d) When appropriate, the written summary or transcript of any personal presentation made; and
- (e) The EMPLOYER's decision on the request for reconsideration.

The file shall not contain any document that has not been made available to the employee or his/her Representative. Copies of any materials added to the file will be provided to the employee or his/her Representative.

Section 18.09 Reconsideration Decision

The decision whether a negative determination will be sustained or set aside will be made by the Director promptly after receipt of the request for reconsideration.

- (a) Upon receipt of the employee's request for reconsideration, the Director shall request the complete file of the case from the supervisor.
- (b) On the basis of the file, any evidence presented by the employee and/or Representative and information gathered from any inquiry or investigation, the Director shall sustain or set aside the negative determination.
- (c) The Director shall notify the employee in writing of the decision.
 - (1) The written decision shall contain a statement that the earlier negative determination is either sustained or set aside with a summary of the reasons for the decision.
 - (2) If the negative decision is sustained, the written decision shall also contain a statement that the employee has the right to appeal this determination to the Merit Systems Protection Board.
 - (3) The CBA excludes from its grievance procedures the review of reconsideration determinations.

Section 18.10

If an employee has been previously notified of performance deficiencies and is currently performing under a Performance Improvement Plan (PIP), the employee's within-grade increase must be denied until the supervisor determines that the employee has achieved an acceptable level of competence.

Section 18.11 Effective Date

- (a) Except as provided in 18.11(b) below, a within-grade increase shall be effective on the first day of the first pay period after the completion of the required waiting period and a determination has been made that the employee is performing at an acceptable level of competence.
- (b) When an acceptable level of competence is achieved at some time after a negative determination, the effective date is the first day of the first pay period after the acceptable level of competence determination has been made.
- (c) When a negative determination is changed as a result of reconsideration or appeal of a negative determination, the change supersedes the negative determination. The effective date of the within-grade increase is the date on which the increase would otherwise have been affected.

Section 18.12 Waiver of Requirement for Determination

An acceptable level of competence determination shall be waived and a within-grade increase granted when an employee has not served in any position for at least ninety (90) calendar days during the final 52 calendar weeks of the waiting period for one (1) or more of the following reasons:

- (a) Because of absences that are creditable service in the computation of a waiting period under 5 C.F.R. § 531.406;
- (b) Because of paid leave;
- (c) Because the employee received credit under the back pay provisions at 5 C.F.R. Part 550;
- (d) Because of details to another agency or EMPLOYER for which no rating has been prepared;
- (e) Because the employee has had insufficient time to demonstrate an acceptable level of competence due to authorized activities of official interest to the agency not subject to appraisal under 5 C.F.R. part 430; and serving as a representative of a labor organization under Chapter 71 of Title 5, United States Code; or
- (f) Because of long-term training.

In such a situation, there shall be a presumption that the employee would have performed at an acceptable level of competence had the employee perform the duties of his/her position of record for the minimum appraisal period under the applicable Agency performance appraisal system.

Section 18.13 Continuing Evaluation

When a within-grade increase has been withheld, a new determination may be made any time after thirty (30) calendar days, but no more than fifty-two (52) calendar weeks, following the original eligibility date for the within-grade increase, and for as long as the within-grade increase continues to be denied, determinations shall be made no longer than every fifty-two (52) calendar weeks.

Article 19.00 Position Description and Classification

Section 19.01

All classified and encumbered bargaining unit position descriptions shall be posted in a prominent place on the agency's internal website (inSite). Each employee shall be provided with a current copy of his/her Official Position Description which accurately reflects the major duties and responsibilities of that position within ten (10) work days of assignment to the position. Employees are encouraged to discuss with their supervisors any discrepancies between their position descriptions and their actual duties assigned, and it shall be the responsibility of the EMPLOYER to make every reasonable effort to make adjustments where appropriate. Employees may request a position description at any time. The Union will be provided the opportunity to review changes in position descriptions.

Section 19.02 Classification Appeal

An employee who feels that his/her position is improperly classified is encouraged to first discuss the matter with his/her supervisor. If the matter cannot be informally resolved the employee may either:

(a) Submit a written request for a review of the classification (desk audit) of his/her position to the Chief Human Capital Officer (CHCO) or his/her designee, as appropriate, and simultaneously serve a copy on his/her immediate supervisor.

(b) The employee shall set forth in the appeal the reason(s) why the classification is being questioned.

(c) If the employee is dissatisfied with the results of the review, he/she may continue the appeal process by appealing the decision to the Office of Personnel Management (OPM). The decision of OPM is final; or

(d) The employee may submit a classification appeal request directly to OPM. The decision of OPM is final.

When EEOC completes the requested review (audit), the employee shall be furnished with the results of the classification review and information on his/her appeal rights and procedures as set forth in 5 C.F.R. § 511.603. et seq.

Employees may request assistance from UNION Representatives on classification appeals.

Section 19.03

Classification reviews, desk/job audits and/or surveys shall be performed by qualified personnel staff or OPM representatives. The EMPLOYER will inform the UNION of any changes as a result of surveys in a timely manner prior to implementation. The EMPLOYER will advise the UNION in advance of the scheduled visits of personnel staff members or OPM representatives to perform position classification surveys of bargaining unit positions, indicating the purpose and the organizational entity and positions(s) being studied. Copies of classification determinations concerning bargaining unit changes and the rationale shall be furnished to the UNION as a result of position classification surveys. The UNION shall be afforded an opportunity to comment on the results of the classification review.

Section 19.04

Current position descriptions and newly classified position descriptions shall not include such ambiguous phrases as "other duties as assigned," however, may include phrases such as "other job-related duties as assigned."

Section 19.05

In the event the EMPLOYER is assigned additional functions involving position classification, the EMPLOYER shall initiate action to review the grade levels of any EEOC positions changed by the addition of duties. Where necessary, a new or amended position description will be issued.

Section 19.06

When the EMPLOYER becomes aware that the work assigned to an employee does not substantiate his/her present grade, the EMPLOYER shall make every reasonable effort to limit or eliminate any resultant adverse effect on such an employee.

Article 20.00 Performance Appraisal System

The Parties agree that an objective performance appraisal system (a sub-component of the Agency's Performance Management System) is in the best interest of both the EMPLOYER and UNION. The performance appraisal/evaluation procedures agreed to by the Parties shall provide, to the maximum extent possible, an accurate and objective evaluation of job performance. The Parties recognize that an Employee Performance Evaluation System (EPES) is in place and agree to meet and confer as appropriate in accordance with Article 7.00, Labor Management Negotiating Procedures, if and when it is changed and/or modified.

Article 21.00 Equal Employment Opportunity

Section 21.01

The EMPLOYER and the UNION agree that in their respective policies and practices, they shall not discriminate against any employee on the basis of race, color, sex (including, but not limited to, sexual harassment), sexual orientation, gender identity, national origin, religion, age, disability, genetic information, marital status or political affiliation or other protected classes or groups and shall promote a workplace free of harassment based on any of these prohibited factors.

Section 21.02

The EMPLOYER shall, pursuant to Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 and applicable EEOC orders, survey its physical facilities, and bring them into compliance with applicable laws and regulations, employ individuals with disabilities and make reasonable accommodations for qualified persons with disabilities.

Section 21.03

The EMPLOYER and the UNION recognize that employees are adversely affected by harassment based on membership in any protected class or group listed in 21.01, or in retaliation because of opposition to discrimination or participation in discrimination complaint proceedings, even if the conduct has not risen to the level of illegality but has the potential to become so severe or pervasive as to violate the law. Unwelcome verbal or physical conduct based on membership in any protected class or group or in retaliation constitutes prohibited harassment when the conduct can reasonably be considered to adversely affect the work environment, or when an employment decision affecting the employee is based on the employee's acceptance or rejection of such conduct.

Section 21.04

Where it is determined that a need exists, the EMPLOYER may make available materials in appropriate media and languages other than English.

Section 21.05

It is the duty of the EMPLOYER to reasonably accommodate the religious observances and/or practices of employees unless such accommodation would create an undue hardship for the EMPLOYER.

Section 21.06

The EMPLOYER shall designate appropriate representatives to carry out counseling and other Equal Employment Opportunity (EEO) functions consistent with applicable law, regulations and other

activities. A link to the Office of Equal Opportunity (OEO) contact information and filing procedures will be posted on inSite.

Section 21.07

The EMPLOYER agrees to provide information to the UNION concerning the EMPLOYER's Equal Employment Opportunity (EEO) profile, Affirmative Employment Program, as well as the implementation of the EEO policies and practices. Such information shall be provided annually within ten (10) calendar days of completion.

Article 22.00 Reorganization

Section 22.01

The EMPLOYER and the UNION jointly recognize the desirability of maintaining employment stability. It is also recognized that occasions may arise where adjustments of the work force may be necessary through such means as reorganization and/or realignment.

Section 22.02

A reorganization is defined as the planned elimination, addition or redistribution of functions or duties within an organizational component.

Section 22.03

A realignment is defined as the movement of an employee and his/her position when: (1) a transfer of function or an organizational change occurs; (2) the employee stays in the same Agency; and (3) there is no change in the employee's position, grade or pay.

Section 22.04

For each organizational unit affected, the EMPLOYER shall simultaneously serve both the National Council of EEOC Locals No. 216 and the affected Local UNION with a proposed reorganization plan including statements of duties, projected effect on position classification, projected series and grade and relative placement of affected employees, mission and function statements, and the complete table of reorganization showing lines of authority, at least thirty (30) calendar days prior to implementation of the reorganization.

Section 22.05

When a reorganization is the cause of a personnel action involving separation, furlough for more than thirty (30) calendar days, change to lower grade or reassignment involving displacement of another employee, Reduction-in-Force (RIF) procedures shall be followed and Article 23.00, Reduction-in-Force and Transfer of Function Procedures, shall apply.

Section 22.06

After a reorganization is completed and when the EMPLOYER becomes aware that the work assigned to an employee does not substantiate his/her present grade, the provisions of Article 19.00, Position Description and Classification, Section 19.07 shall apply.

Section 22.07

When the EMPLOYER determines it is necessary to detail employees as part of the implementation and/or transition of reorganization and/or realignment, Article 15.00, Reassignments, Details and Temporary Promotions, shall apply.

Section 22.08

All employees whose duties are substantially different from those previously performed shall be provided necessary training in the new duties following their assignment to the new unit.

Article 23:00 Reduction-In-Force and Transfer of Function Procedures

Section 23.01

The provisions of this Article establish or specify the procedures which apply to the implementation of any EMPLOYER decision that a reduction-in-force (RIF) is necessary, and specify actions the EMPLOYER will take to assist bargaining unit employees who are impacted as a consequence.

Section 23.02

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

Section 23.03

Transfer of function is the transfer of the performance of a continuing function from one competitive area and its addition to one (1) or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected; or the movement of the competitive area in which the function is performed to another commuting area.

Section 23.04

At the earliest practicable date, the EMPLOYER shall notify the UNION in writing of a pending RIF or transfer of function prior to informing employees. The notice to the UNION shall include the reasons for the RIF or transfer of function, the number and types of positions affected and the proposed date of the action. Prior to implementing a RIF or transfer of function, the EMPLOYER shall give the UNION a reasonable opportunity to negotiate the impact and implementation of the planned action. The Parties will also negotiate the number of UNION Representatives needed to monitor the RIF or transfer of function.

Section 23.05

To eliminate or minimize any adverse impact upon employees in a RIF or transfer of function, the EMPLOYER shall give full consideration to alternate methods including, but not limited to, attrition, reassignment or special details which do not result in displacement. In the event a RIF or transfer of function is conducted, the EMPLOYER shall disrupt as few of the Agency's operations and/or organizational components as possible and clearly specify the extent and projected impact of such action.

The EMPLOYER will provide equitable treatment to all employees and give every consideration to retaining career employees. The EMPLOYER shall also consider placing affected employees in vacant positions.

Section 23.06 Competitive Areas

- (a) The competitive areas for RIF shall be:
 - (1) Headquarters: an office level that reports to the Chair or the General Counsel;
 - (2) Field: a District Office, including the Field, Area and Local Offices if within the respective District Office's local commuting area.
- (b) Competitive areas for RIF may be expanded if circumstances require and the Parties agree.
- (c) When a RIF or a transfer of function is implemented, a copy of the competitive levels for a competitive area and a copy of the retention registers shall be provided to the UNION within five (5) work days of the completion of each. All other appropriate and related records shall be available for review by the UNION.

Section 23.07

The EMPLOYER shall provide the following information to employees in the affected competitive area to help them understand why they are affected by the RIF or transfer of function:

- (a) The extent of the competitive areas, and specific reasons and plans for the RIF or transfer of function in accordance with applicable rules and regulations; and
- (b) Information on the regulations governing RIFs or transfers of function, on the specific kinds of assistance provided for affected employees and on the procedures for obtaining such information.

Section 23.08

The EMPLOYER shall provide a specific written notice to each employee affected by the RIF or transfer of function at least 60 calendar days prior to the effective date. When a reduction in force is caused by circumstances not reasonably foreseeable, the Director of OPM, at the request of the Agency head or designee, may approve a notice period of less than sixty (60) days. The specific notice shall include the following information:

- (a) The action to be taken;
- (b) The effective date of the action;
- (c) The employee's service computation date and subgroup;
- (d) The employee's competitive area and competitive level;
- (e) The employee's three most recent ratings of record received during the last 4 years;

(f) If applicable, the reasons why a lower standing employee is being retained in his/her competitive level for more than thirty (30) calendar days after the date a higher standing employee is released from the same retention register;

(g) The employee's appeal or grievance rights and the time limits for such actions;

(h) If applicable, notification that the employee is being separated under liquidation procedures without regard to standing within the subgroup and the date the liquidation will be completed; and

(i) If applicable, specific information on the Reemployment Priority List and Career Transition Assistance Programs.

The employee must also be given a release to authorize, at his or her option, the release of his or her resume and other relevant employment information for employment referral to State dislocated worker unit(s) and potential public or private sector employers; and information concerning how to apply both for unemployment insurance through the appropriate state program and benefits available under the State dislocated worker unit(s), as designated or created under Title III of the Job Training Partnership Act, and an estimate of severance pay (if eligible).

A copy of the specific notice to be issued employees and any correspondence thereafter modifying or amending this notice or a suitable summary of such notices or offers shall be simultaneously provided to the UNION. Any additional correspondence shall be made available for review by the UNION.

Section 23.09

Employees receiving a RIF or transfer of function notice may review the retention register and related records as set forth in 5 C.F.R. § 351.505 and other applicable laws, regulations, and rules.

Section 23.10

Affected employees shall have a minimum of ten (10) work days to accept or reject an offer of another position.

Section 23.11

Competing employees must be identified with the transferring function in one of two ways: "Identification Method One;" or "Identification Method Two." A competing employee is identified with a transferring function under Identification Method One if the employee performs the function during the majority of his/her work time, or, regardless of the amount of time the employee performs the function, the function includes the duties controlling his or her grade or rate of pay. Identification Method Two which is used to identify positions and employees ONLY when Method One is not applicable, applies to employees who perform the function during less than half of their work time AND whose duties in the function are not grade-controlling. If Method Two is applicable, the Agency will follow regulatory RIF requirements to determine the competing employees' standing on the register, i.e., inverse or actual order.

A competing employee who is identified for transfer under Method One or Method Two has no right to transfer with a function unless the alternative is separation or downgrading in the competitive area losing the function.

Section 23.12

The Agency may permit other employees of the Agency to volunteer for transfer with the function in place of employees identified under Method One or Method Two. However, the Agency will permit these other employees to volunteer only if no competing employee identified under Method One or Method Two is separated or demoted solely because a volunteer transferred in place of him/her to the gaining competitive area. If the total number of employees who volunteer for transfer exceeds the number of employees required to perform the function in the gaining competitive area, preference may be given to the volunteers with the highest retention standing.

Section 23.13

In the event of a RIF affecting competitive service employees, the following procedures shall apply:

- (a) The EMPLOYER shall make the best offer of employment possible under the regulations to competitive service employees displaced by RIF.
- (b) After receipt of the EMPLOYER's offer, an employee may request an assignment to vacant position for which he/she is qualified at his/her same or lower grade. The EMPLOYER agrees to consider such request.
- (c) If an employee is placed in a lower grade, the employee shall retain grade and pay in accordance with applicable law and the provisions of EEOC Order(s) governing retention of grade and priority placement.

Section 23.14

The EMPLOYER shall establish and maintain a reemployment priority list in accordance with established regulations. As soon as the EMPLOYER knows it cannot retain an employee in his/her competitive area, his/her name will be added to the list.

Section 23.15

The EMPLOYER shall make every reasonable effort to find employment in other Federal agencies within the competitive area for those employees who are separated from the Equal Employment Opportunity Commission. The EMPLOYER shall counsel employees for whom no positions are located as to any benefits that may be available to them pursuant to information obtained from appropriate State employment service agencies.

Section 23.16

The EMPLOYER shall maintain all lists, records and information pertaining to the RIF or transfer of function for at least one (1) year.

Section 23.17

The EMPLOYER shall grant duty time to those employees moving as a result of a RIF or transfer of function to find new housing and schools, to make arrangements for disposition of their current homes and to handle any other matter involved in the move in accordance with applicable regulations. The EMPLOYER will provide counseling to affected employees regarding their entitlement.

Section 23.18

When the EMPLOYER is unable to offer an assignment at the same grade for which the employee qualifies, the EMPLOYER agrees to consider waiver of the qualifications in light of the availability of vacant positions, provided the employee is able to perform work in the comparable position

without undue interruption to the mission of the EMPLOYER and the employee meets the minimum educational requirements.

Section 23.19

Employees shall be entitled to severance pay in accordance with applicable laws and regulations.

Section 23.20

(a) Employees in the excepted service shall compete within competitive levels, in order of retention standing as specified in OPM regulations. However, EEOC will not provide retreat rights for its excepted service employees.

(b) After receipt of the EMPLOYER's offer, an employee may request an assignment to a vacant position for which he/she is qualified at his/her same or lower grade. The EMPLOYER agrees to consider such request.

Article 24.00 Employee Personnel Files

Section 24.01

The EMPLOYER shall not, without the employee's knowledge, place in an employee's Official Personnel Folder (eOPF) or Employee Performance File (EPF) material of any nature which may reflect adversely upon the employee. A copy of any adverse material to be scanned in the eOPF or place in the EPF will be simultaneously dispatched to the affected employee, unless prohibited by government-wide rules or regulations.

Section 24.02

The eOPF is an electronic version of the paper OPF and a system for accessing the electronic folder online. The eOPF system combines document management with workflow capabilities. The eOPF allows each employee to have an electronic personnel folder instead of a paper folder. Employees have 24 hours access to their eOPF. eOPF can be accessed at home with VPN access. The eOPF is the bargaining unit employee's official personnel record.

Section 24.03

If an employee or their representative requires access to an employee's eOPF, the employee must download the information. In addition to the subject employee, only OCHCO will maintain and have access to official personnel folders. OCHCO also may provide eOPF access to special investigators. Employees have the option to request from the OCHCO an audit trail that records when and why an individual has reviewed an eOPF. The security of eOPF and EPFs shall be maintained in accordance with applicable government-wide rules and regulations. Employees have the right to have access to the kinds, format, and location of all records that are maintained and are filed in a system of records under personal identifier (social security) numbers.

Section 24.04

In the event that an employee notices that a document in their eOPF that does not belong to them, the employee should notify OCHCO immediately via eOPF@eeoc.gov to correct the situation. Personnel files in the eOPF system are covered by the Privacy Act of 1974, 5 U.S.C. § 552a. Employees, who knowingly and willfully disclose personal information of other individuals to any person or agency not entitled to receive it, may be found guilty of a misdemeanor and fined.

Section 24.05

Any information contained in the employee's eOPF or EPF which the employee believes to be inaccurate or incomplete shall be subject to an amendment by written request of the employee in accordance with the Privacy Act of 1974, as amended, 5 U.S.C. § 552a, and 5 C.F.R. §§ 297.301-308. The request for an amendment shall be sent to the CHCO or the District Director or his/her respective designee. The request must provide sufficient information to identify the employee, the issue giving rise to the request and a statement with any supporting evidence which provides reasons why the amendment should be made. The EMPLOYER shall within 30 days make a determination whether the employee's request is substantiated prior to any disclosure or use of the subject record. If, on administrative review, the employee's request for an amendment is denied, the employee may file with the EMPLOYER a concise statement of his/her reasons for disagreement with the denial. When such a statement is filed, the EMPLOYER shall sufficiently annotate the record so that the fact of the disputed record, or portion thereof, will be apparent and provide copies of the employee's statement to persons or other agencies to whom the disputed record is disclosed.

Section 24.06

Performance ratings of record, including the performance plans on which they are based, shall be retained for four (4) years in accordance with 5 C.F.R. § 293.404(a)(1)(i) in the Employee Performance Folder (EPF). Pursuant to 5 U.S.C. § 4303(d), when an employee is not reduced in grade or removed because of improved performance during the advance notice period, and the employee's performance continues to be acceptable for one (1) year from the date of the advance written notice, then any entry or other notation of the unacceptable performance for which the action was proposed, shall be removed from the employee's file.

Section 24.07

Performance-related material maintained in a work folder to assist the supervisor/manager in accurately assessing employee performance may include transcripts of employment and training history, documentation of special licenses, certificates, or authorizations necessary in the performance of the employee's duties, information regarding specific employee problems and other such records that the EMPLOYER determines to be appropriate for retention in the work folder. Any documents in the work folder used in the personnel management process shall be available to employees.

Section 24.08

Individual personal non-agency records, which are retained by the supervisor for his/her personal use as a memory aid and which are not under the control of the Agency (i.e., they may be retained or discarded solely as the supervisor sees fit) will be kept in a secure fashion, will not be circulated or reviewed outside the employee's chain of command and will not be available to employees. Any such documentation used to support any disciplinary or adverse action will be made available to the employee and his/her Representative in accordance with Article 37.00 Disciplinary Action and 38.00 Adverse Actions of this Agreement.

Section 24.09

When an employee leaves the Agency, the employee's EPF (containing the performance ratings of record that are four (4) years old or less, the performance plan on which the last rating was based and the summary rating prepared because the employee is leaving the position) will be sent electronically to the gaining agency in the eOPF system.

Article 25.00 Safety and Health

Section 25.01

The EMPLOYER and the UNION agree that it is the right of every employee to work in a physical environment free of health or safety hazards. Any employee also has the right to report unsafe or unhealthy working conditions. To the fullest extent of its authority, the EMPLOYER shall provide and maintain a safe workplace for its employees, and comply with all applicable Federal laws and regulations relating to the safety and health of its employees.

The Parties agree detection and correction of unsafe and unhealthy working conditions at the earliest possible time are essential elements of the Safety and Health Program. Each Safety and Health representative shall be provided with a copy of the Agency's Safety and Health Handbook.

Section 25.02

Upon a supervisor being notified or if the supervisor is unavailable, another management official, of a possible hazardous condition which presents an imminent danger to the safety and health of employees and/or will interrupt EMPLOYER operations, the supervisor shall immediately inspect the area or condition and determine whether it is safe for the employee to continue working in the area. If immediate inspection and/or assessment cannot be made, the supervisor shall direct the employee to a non-hazardous worksite.

When physical conditions present an imminent danger to the safety and health of employees and the EMPLOYER is unable to provide an alternative work station, the District, Area, Local and Field Office Director or the Headquarters designee shall grant excused leave when he/she determines that the problem cannot be corrected before the end of the employee's tour of duty.

Section 25.03

An employee may depart from his/her work station or decline to perform an assigned task without permission of his/her supervisor only when the employee reasonably believes that under the circumstances he/she is exposed to a health or safety hazard presenting an imminent risk of death or serious bodily harm and that there is insufficient time to seek redress first from the EMPLOYER. In such an event, the employee shall remain on or near the premises and be immediately available for recall to work.

Section 25.04

The EMPLOYER shall select a Safety and Health Officer from Headquarters who shall monitor the development and implementation of the EMPLOYER's overall program. The Safety and Health Officer will be responsible for selecting a representative from each Headquarters, District, Area, Local and Field Office in order to monitor and assist in carrying out the Agency's Safety and Health Program. The UNION will designate a Safety and Health Officer in each office who will work with the Management Representative as a team to resolve safety and health issues. The Safety and Health Representatives shall address issues such as computers, security plans, ergonomics, employee assistance programs, environmental hazards and emergency release procedures (i.e., inclement weather or building conditions).

The Parties agree that their representatives will communicate on matters of safety and health on the basis of complete and open disclosure and ensure the dissemination of information on safety activities to all employees. The UNION's Safety and Health Representatives shall attend safety activities for all employees. The UNION's Safety and Health Representatives shall attend safety and

health training on official time. The Safety and Health Representatives shall periodically arrange training and inspect the EMPLOYER's premises and report their findings and recommendations to the appropriate Office Director and the EMPLOYER's designated Safety and Health Officer.

Section 25.05

The EMPLOYER shall continue to utilize the services of health services or other authorized health facilities-for the treatment of work-related illness or injuries resulting from work-related accidents. Within budgetary constraints as determined by the EMPLOYER, health facilities will be located on the EMPLOYER's premises. An appropriate first-aid kit shall be available at every facility. Both the Employer and the Union recognize the benefits of training in lifesaving techniques such as first aid, CPR, and defibrillator usage. Employees will receive a reasonable amount of duty time, with supervisory approval, to attend classes in these areas. EMPLOYER and/or the UNION may offer assistance to an employee with a medical emergency while on official duty status.

Section 25.06

The EMPLOYER shall carry out General Services Administration (GSA) regulations on smoking and any other government-wide laws, rules or regulations on smoking. Internal training conferences and meetings shall be non-smoking. The EMPLOYER supports and encourages its employees to quit smoking. All EEOC offices are encouraged to schedule smoking cessation classes offered through their Employee Assistance Program (EAP). Participation in the smoking cessation classes shall be voluntary.

Section 25.07

The policy of the EMPLOYER is to provide safe and healthful workplaces for all EEOC employees. In keeping with the policy, the EMPLOYER acknowledges that there are certain ergonomic and environmental factors that can contribute to the health and comfort of computer users.

These factors involve the proper design of workstations and the education of managers, supervisors, and employees to the ergonomic job design, and organizational solutions to computer problems as recommended in various studies published by the National Institute for Occupational Safety and Health. The AGENCY is encouraged to survey their offices to assess ergonomic needs and submit appropriate requests to the Safety and Health Officer and the Disability Program Manager as appropriate.

Section 25.08

The EMPLOYER shall ensure that all computer equipment used by employees is properly installed and maintained. Upon request of an employee engaged in the use of computer equipment, the employee's supervisor will grant a change in work duties not requiring use of the computer equipment for at least ten (10) minutes after two (2) hours of continuous work on such equipment.

Section 25.09

Employees may voluntarily seek counseling, referral and information from the Employee Assistance Program (EAP) on a confidential basis; or managers and supervisors may refer employees to the EAP. An employee who participates in the EAP is assured that information relating to his/her care will not be released to anyone, including his/her supervisor, without the written consent of the employee, except when required by law.

Section 25.10

At least once a year, the EMPLOYER will make employees aware of the EAP and the services it provides. Newly hired employees will receive appropriate EAP materials at their EEOC orientation. A link to EAP services and contact information shall be posted on inSite.

Within sixty (60) days of the change in any EAP contractor, or any change in the nature of services provided, all affected employees will be notified in writing by the EMPLOYER.

Section 25.11

Nothing in this Article is intended to replace or supersede procedures in other Articles of this Agreement covering individual health problems (e.g., on-the-job-injury, sick leave).

Section 25.12

The EMPLOYER agrees to make available to employees when using a government vehicle a cell phone with long distance and roaming capabilities, as well as a cell phone battery charger. The cell phone is provided for emergency use only. For employees who have been approved to use privately owned vehicle (POV) on official travel and where there is not an available agency cell phone, the EMPLOYER will reimburse employees for the use of personal cell phones for emergency purposes only. Reimbursement shall not normally exceed \$8.50. Reimbursement for calls in excess of \$8.50 will be considered on a case-by-case basis with documentation of the specific cell phone call(s) from the cell phone provider.

Section 25.13 Nursing Mothers in Federal Government

The EMPLOYER will provide employees who need a lactation room at work for expressing breast milk with reasonable break times to express breast milk as frequently as needed by the nursing mother for her child for one year after the child's birth. The employee may use regularly compensated break times for lactation. If the employee will be in a non-work status, the EMPLOYER will also allow for the use of workplace flexibilities, such as adjustment to the employee's work schedule, the use of accumulated credit hours, annual leave, leave without pay (LWOP), and compensatory time for the break times as allowed under the law. The EMPLOYER will provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public to be used by employees to express breast milk. The room, which may be an employee's single occupancy private office, shall be furnished at a minimum with a chair, a small table, a computer, if available, and at least one electrical outlet. The EMPLOYER shall install a lock on the door of the room to be used and provide a dry-erase board or a sign on the door to prevent disturbance and intrusion. Should any EEOC office be relocated during the period of this Agreement, the EMPLOYER agrees to include in its space request to the General Services Administration a request for private space, other than a bathroom, with an internal lock, to be used as a lactation room.

Article 26.00 On-The-Job Injury

Section 26.01

Employees with duties and responsibilities related to the Federal Employees' Compensation Act (FECA), 5 U.S.C. §§ 8101 et seq., EEOC Order 570.006 and other appropriate rules and regulations regarding rights and obligations governing employee compensation or other entitlements involving traumatic injury or occupational disease shall be provided appropriate orientation, training, guidance, necessary forms and technical data to carry out their duties.

Section 26.02

The term "injury" includes, in addition to injury by accident, a disease proximately caused by the employment. Employees who become injured in the performance of their duties shall be advised by their supervisors and/or personnel staff regarding the right to file for compensation benefits and the benefits payable.

"Traumatic injury" means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.

"Occupational disease" or "illness" means a condition produced by the work environment over a period longer than a single workday or shift.

An occupational disease or illness can be produced by systemic infections; continued or repeated stress or strain; exposure to toxins, poisons, fumes, noise, etc. or other continued and repeated exposure to conditions of the work environment over a longer period of time (at least two (2) work days).

Section 26.03

An employee who sustains a disabling, job-related traumatic injury, supported by acceptable medical documentation, is entitled to continuation of pay (COP) instead of sick or annual leave for a period of up to forty-five (45) calendar days. However, in no event shall this be construed as requiring continuation of a person's employment beyond the date it would have terminated had the employee not been injured.

A properly completed Form CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation must be filed with the employee's supervisor as soon as possible. The supervisor will complete and sign the receipt of notice of injury portion of the Form CA-1 and return it to the employee.

The EMPLOYER will promptly submit the notice and claim to the Office of Workers' Compensation Programs (OWCP) District Office no later than two (2) work days after receipt of the Form CA-1 from the employee. If the employee continues to be disabled for work supported by acceptable medical documentation following the continuation of pay, the employee is entitled to receive compensation payments from the OWCP. The EMPLOYER will assist the employee in completing the necessary application forms. Sick and annual leave may then be used, and afterward may be repurchased in accordance with OWCP procedures.

Upon request, leave may be advanced up to the maximum allowable by law as required during absences due to the injury, and the amount of leave owed shall be entered in the employee's time and attendance records. If the EMPLOYER denies a request for advanced leave, the employee will be notified in writing.

Section 26.04

For an occupational disease, an employee or someone acting on behalf of the employee is required to give written notice as soon as possible but normally no later than thirty (30) calendar days after the employee becomes aware of the condition, to the employee's supervisor. The affected employee or someone acting on behalf of the employee shall file a completed Form CA-2, Notice of Occupational

Disease and Claim for Compensation, with the employee's supervisor. The EMPLOYER will promptly submit the claim to the OWCP but no later than two (2) work days after receipt of the Form CA-2 from the employee.

Section 26.05

The employee shall notify his/her supervisor as soon as possible, but no later than thirty (30) calendar days after sustaining a job-related traumatic injury. When an injury is reported to the supervisor, the supervisor shall immediately inform the employee, if appropriate, that he/she should go to the nearest available U.S. Medical Officer, or hospital, including any appropriate health unit on the premises, or at the employee's option, to a duly qualified physician or hospital of the employee's choice in the area. In emergency cases, when the employee is unable to indicate a preference, the EMPLOYER shall provide appropriate emergency care at the nearest duly qualified U.S. Medical Officer or hospital.

As soon as practicable after receiving medical attention, the employee shall submit acceptable medical documentation (CA-17, Duty Status Report or a CA-20, Attending Physician's Report) stating the nature of the injury and the expected disability period.

Section 26.06

If an employee would have been compensated but for administrative errors by the Agency which affect the processing of an injured employee's claim, the EMPLOYER will take prompt action to correct such errors, including restoration of leave and pay.

Section 26.07 Repurchase Agreements

If an employee uses leave during a period of disability caused by an occupational disease or illness or an on-the-job injury, and a claim for compensation is approved, the employee may, "buy back" the used leave and have it re-credited to the employee's account. To buy back leave, an employee who has sustained an on-the-job injury must submit a written request in accordance with OWCP procedures.

Section 26.08

Any files maintained by the EMPLOYER pursuant to the application of this Article shall be available for review by the employee or his/her designated Representative in accordance with applicable laws, rules or regulations.

Section 26.09

The supervisor shall inform the employee whether continuation of pay will be controverted, and if so, whether the pay will be terminated and the basis for this action. The EMPLOYER may terminate pay only for those reasons specified on Form CA-1 and by government-wide rules or regulations.

Article 27.00 Leave

Section 27.01

This Article sets forth the Agency's policies and procedures for leave administration for bargaining unit employees. Such administration will be in accordance with the requirements of 5 U.S.C. §§ 6301 et seq., 5 C.F.R. Part 630, EEOC Order No. 550.007 and any other applicable government-wide orders, rules or regulations relating to leave.

A. Annual Leave

Section 27.02

Annual leave is the earned right of each employee. It is the employee's option to select the amount and time he/she wishes to take annual leave, subject to approval of the immediate supervisor.

(a) The Parties agree that employees are encouraged to manage annual leave in such a way they can request and the supervisor can grant at least two (2) consecutive weeks of annual leave each leave year.

(b) Permanent employees have the right to request advance annual leave. Annual leave may be advanced for periods not to exceed the amount the employee would accrue for the remainder of the current leave year and the employee is expected to remain in service through the leave year. Advanced annual leave must be requested through the EMPLOYER's automated Time and Attendance System, accompanied by a brief explanation for the advanced leave.

Section 27.03

Employees shall submit a request for leave through the EMPLOYER's automated Time and Attendance System. Whenever possible, annual leave should be requested at least one (1) week in advance. Employees are responsible for notifying the supervisor, via e-mail, at the time that a request for leave has been submitted in the automated system. A supervisor will act on an employee's leave request in a timely manner, normally within three (3) work days of receipt. When denying annual leave requests, the supervisor shall notify the employee involved. Denial of annual leave shall be recorded in the automated system setting forth specific reason(s) for denial and the date(s) when the employee can take the requested leave.

Section 27.04

Employees' requests for emergency leave shall normally be acted upon immediately. The supervisor may inquire into the nature of the emergency.

Section 27.05 The EMPLOYER shall issue an annual notice to employees regarding use or lose leave. It shall be the joint responsibility of the employee and the EMPLOYER to insure that annual leave is not forfeited. The supervisor shall make every attempt to notify the employee of any cancellation of approved leave in sufficient time to allow the employee to reschedule use of his/her leave.

Section 27.06

An employee on approved leave shall not be called back to work except in cases where unforeseen emergencies arise and the EMPLOYER has made every effort to avoid such a change. Leave reimbursement shall be in accordance with applicable law.

B. Sick Leave

Section 27.07

Sick leave shall be granted to employees in accordance with applicable laws, government-wide rules and regulations, and EEOC orders and directives. Approval of sick leave shall be granted to an employee when the employee:

- (a) Receives medical, dental, or optical examination or treatment;
- (b) Is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth;
- (c) Provides care for a family member as a result of
 - (1) Physical or mental illness, injury, pregnancy, childbirth, or medical, dental, or optical examination or treatment;
 - (2) A serious condition, including physical or mental illness, injury, pregnancy or childbirth.
 - (3) A determination by the health authorities having jurisdiction or by a health care provider, that the family member would jeopardize the health of others by his/her presence on the job because of exposure to a communicable disease;
- (d) Makes arrangements necessitated by the death of a family member or attends the funeral of a family member;
- (e) Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his/her presence on the job because of exposure to a communicable disease; or
- (f) 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.

Section 27.08 Definitions for Sick Leave

- (a) When an employee requests sick leave to care for a family member or for bereavement purposes related to the death of a family member, the agency may require the employee to document his or her relationship with that family member.
- (b) Family member means an individual with any of the following relationships to the employee:
 - (1) Spouse, and parents thereof;
 - (2) Sons and daughters, and spouses thereof;
 - (3) Parents, and spouses thereof;
 - (4) Brothers and sisters, and spouses thereof;
 - (5) Grandparents and grandchildren, and spouses thereof;
 - (6) Domestic partner and parents thereof, including domestic partners of any individual in two (2) through five (5) of this definition; and

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

(c) Immediate relative means an individual with any of the following relationships to the employee:

(1) Spouse, and parents thereof;

(2) Sons and daughters, and spouses thereof;

(3) Parents, and spouses thereof;

(4) Brothers and sisters, and spouses thereof;

(5) Grandparents and grandchildren, and spouses thereof;

(6) Domestic partner and parents thereof, including domestic partners of any individual in one (1) through five (5) of this definition; and

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

(d) Parent means:

(1) A biological, adoptive, step, or foster parent of the employee, or a person who was a foster parent of the employee when the employee was a minor;

(2) A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian; or

(3) A person who stands in loco parentis to the employee or stood in loco parentis to the employee when the employee was a minor or required someone to stand in loco parentis.

(4) A parent (as described in the above subparagraphs) of an employee's spouse or domestic partner.

(e) Son or daughter means:

(1) A biological, adopted, step, or foster son or daughter of the employee;

(2) A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;

(3) A person for whom the employee stands in loco parentis or stood in loco parentis when that individual was a minor or required someone to stand in loco parentis; or

(4) A son or daughter (as described in 1-3) of an employee's spouse or domestic partner.

(f) Domestic partner means an adult in a committed relationship with another adult, including both same sex and opposite-sex relationships.

(g) 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).

Section 27.09

The Federal Employees Family Friendly Leave Act, 5 U.S.C. § 6307 limits the amount of sick leave an employee may use for purposes described in Section 27.07 (c) and (d) but does not otherwise restrict the number of hours an employee may use for purposes described in Section 27.07 (a), (b), (e) and (f).

(a) Full-time employees may use up to a total of 104 hours of sick leave each year for purposes described in Section 27.07 (c) (i) and (d); or up to 480 hours of sick leave for purposes described in (c) (2), bringing the total amount of sick leave that may be used for these purposes to a maximum of 480 hours per year. An employee who uses the maximum number of hours authorized under section 27.07 (c) and (d) in a leave year is not entitled to use additional sick leave under those provisions. Consistent with regulations, employees whose schedules change during the leave year must have entitlement to leave under this section recalculated.

(b) Part-time employees or employees with uncommon tours of duty may use an amount equal to the 12 times the average number of hours of work in the scheduled tour of duty each week.

Section 27.10

Employees shall request advance approval for sick leave for the purpose of receiving medical, dental, or optical examination or treatment and, to the extent possible, for the purposes described in Section 27.07 (c), (d) and (f). When the need for sick leave is unanticipated, the employee will notify his/her supervisor as soon as possible but normally within one (1) hour of the beginning of the office core hours to apply for appropriate leave.

Subject to supervisory approval, the employee need not notify the supervisor each work day if the employee's incapacitation will require him or her to be absent longer than one (1) day provided the employee gives an expected date of return.

Section 27.11

When an employee's sick leave balance has been exhausted, the employee may request advance sick leave, not to exceed 240 hours for purposes described in Section 27.07 (b), (c) (2), (e), and (f) or not to exceed 104 hours for all other purposes described in Section 27.07. The following requirements must be met:

(a) the employee files the request for sick leave in the Agency's automated time and attendance system. The request must be supported by a medical certificate or other administratively acceptable evidence, regardless of the duration of the absence;

(b) repayment can reasonably be expected through leave accruals; and

(c) the employee is not currently under a leave restriction.

Section 27.12 An employee may, at his/her option and subject to the limitations herein, elect to use accrued annual leave in place of sick leave with the approval of the supervisor as described in Section 27.03.

Section 27.13

An employee who becomes ill while on annual leave may have the time of illness changed to sick leave provided that the employee notifies the supervisor on the first day of the illness and otherwise complies with the requirements of Section 27.10 of this article.

Section 27.14

A medical certificate may not be required to substantiate a request for approval of sick leave for three (3) days or less unless the employee has been previously notified in writing of suspected abuse of sick leave. An employee will not receive such a notice unless the employee has first been verbally counseled by the supervisor on at least one (1) occasion.

A medical certificate is defined as a written statement signed by a registered practicing physician or other health care provider as defined in 5 C.F.R. § 630.1202 certifying to the incapacitation, examination or treatment, the period of disability while the patient was receiving professional treatment and the time when the employee is expected to return to full or limited duty. Each employee to whom a leave restriction notice has been issued shall have the case reviewed to determine continuance or withdrawal of the written notice. Such review shall be conducted at the Agency's discretion or within ninety (90) days at the employee's request.

Section 27.15

In lieu of sick leave and upon request of the employee, the EMPLOYER will consider, on a case by case basis, the temporary accommodation of an employee whose physician certifies that the employee has become partially incapacitated. The employee's claimed condition is subject to examination by an Agency-approved medical doctor. Such accommodation will be made in a fair and impartial manner and shall not adversely affect other bargaining unit employees.

Section 27.16

The Parties will treat as confidential any medical information given by an employee in support of a request for sick leave. The EMPLOYER may disclose such information subject to its Privacy Act (5 U.S.C. § 552a) obligation, for work related reasons, on a need to know basis only.

C. The Family and Medical Leave Act of 1993

Section 27.17

(a) Consistent with the Family and Medical Leave Act of 1993 (FMLA), 5 U.S.C. §§ 6381 et seq., eligible employees are entitled to a total of 12 weeks of unpaid leave during a 12 month period for one or more of the following reasons:

- (1) The birth of a son or daughter of the employee and the care of such son or daughter;
- (2) The placement of a son or daughter with the employee for adoption or foster care;
- (3) The care for a family member if such family member has a serious health condition;
- (4) The employee has a serious health condition that makes the employee unable to perform the essential functions of his or her job; or
- (5) Any qualifying exigency arising out of the fact that the employee's family member is a covered Military member on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

(b) Subject to providing the appropriate notice and medical documentation, an employee may take intermittent FMLA leave for purposes of subsections three (3) and four (4), above.

(c) When an employee requests leave under FMLA, leave without pay (LWOP) shall be granted and used provided that the notification, medical certification and other requirements are met.

(d) An employee enrolled in a health benefits plan under the Federal Employees Health Benefits Program (established under chapter 89 of title 5, United States Code) who is placed in a leave without pay status as a result of entitlement to leave under §630.1203(a) of this part may continue his or her health benefits enrollment while in the leave without pay status and arrange to pay the appropriate employee contributions into the Employees Health Benefits Fund (established under section 8909 of title 5, United States Code). The employee shall make such contributions consistent with 5 CFR 890.502.

Section 27.18

Definitions

(a) Son or daughter means a biological, adopted, or foster child, a step child, a legal ward, or a child of a person standing in loco parentis who is:

- (1) Under 18 years of age; or
- (2) 18 years of age or older and incapable of self-care because of a mental or physical disability. A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" or "instrumental activities of daily living." Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using the telephones and directories, using a post office, etc. A "physical or mental disability" refers to a physical or mental impairment that substantially limits one or more of the major life activities of an individual as defined in 29 CFR 1630.2 (h), (i) and (j).

(b) In loco parentis refers to the situation of an individual who has day-to-day responsibility for the care and financial support of a child or, in the case of an employee, who had such

responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

Section 27.19

A "serious health condition" means an illness, injury, impairment or physical or mental condition that involves:

- (a) Incapacitation or treatment in connection with inpatient care in a hospital, hospice or residential medical care facility or any subsequent treatment in connection with such inpatient care;
- (b) Continuing treatment by a health care provider for a chronic or long term condition; and
- (c) Prenatal care.

The definition of a "serious health condition" is intended to cover various types of physical and mental conditions and illnesses that require an employee to be absent from work on a recurring basis of more than a few days. With respect to care for a family member as defined in Section 27.08(b), a "serious health condition" is intended to cover conditions and illnesses that make the family member unable to participate in school or in his or her regular daily activities for more than a few days. "Serious health condition" does not cover short-term conditions for which treatment and recovery are very brief.

D. Exigent Circumstance FMLA Leave

Section 27.20

(a) An employee may take FMLA leave while the employee's spouse, son, daughter, or parent (the "covered military member") is on covered active duty or called to covered active duty status for one or more of the following qualifying exigencies:

(1) Short-notice deployment. To address any issue that arises from the fact that a covered military member is notified of an impending call or order to covered active duty seven (7) or fewer calendar days prior to the date of deployment. Leave taken for this purpose can be used for a period of up to seven (7) calendar days beginning on the date a covered military member is notified of an impending call or order to covered active duty.

(2) Military events and related activities.

(A) To attend any official ceremony, program, or event sponsored by the military that is related to the covered active duty or call to covered active duty status of a covered military member; and

(B) To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty status of a covered military member.

(3) Childcare and school activities.

(A) To arrange for alternative childcare when the covered active duty or call to covered active duty status of a covered military member necessitates a change in the existing childcare arrangement for a child;

(B) To provide childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the covered active duty or call to covered active duty status of a covered military member for a child;

(C) To enroll in or transfer to a new school or day care facility a child, when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of a covered military member;

(D) To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a child when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of a covered military member.

(E) For purposes of paragraphs (a)(3)(A) through (a)(3)(D) of this section, "child" means a biological, adopted, or foster child, a stepchild, or a legal ward of a covered military member, or a child for whom a covered military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time the FMLA leave is to commence.

(4) Financial and legal arrangements.

(A) To make or update financial or legal arrangements to address the covered military member's absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and health care powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and

(B) To act as the covered military member's representative before a Federal, State, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the covered military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the covered military member's covered active duty status.

(5) Counseling. To attend counseling provided by someone other than a health care provider for oneself, for the covered military member, or for a child as defined in paragraph (a)(3)(E) of this section, provided that the need for counseling arises from the covered active duty or call to covered active duty status of a covered military member.

(6) Rest and recuperation. To spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment. Eligible employees may take up to five (5) days of leave for each instance of rest and recuperation.

(7) Post-deployment activities.

(A) To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of ninety (90) days following the termination of the covered military member's covered active duty status; and

(B) To address issues that arise from the death of a covered military member while on covered active duty status, such as meeting and recovering the body of the covered military member and making funeral arrangements.

(8) Additional activities.

(A) To address other events that arise out of the covered military member's covered active duty or call to covered active duty status, provided that the agency and employee agree that such leave qualifies as an exigency, and that they agree to both the timing and duration of such leave.

(B) An employee is eligible to take FMLA leave because of a qualifying exigency when the covered military member is on covered active duty or call to covered active duty status as a member of a regular component of the Armed Forces, or when the covered military member is on covered active duty or call to covered active duty status in support of a contingency operation pursuant to one of the provisions of law identified in the definition of covered active duty or call to covered active duty status as either a member of the reserve components (Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve, and Coast Guard Reserve), or a retired member of the Regular Armed Forces or Reserve.

(C) For those called to covered active duty status in support of a contingency operation

1) A call to active duty for purposes of leave taken because of a qualifying exigency refers to a Federal call to active duty. State calls to active duty are not covered unless under order of the President of the United States pursuant to one of the provisions of law identified in paragraph (b) of this section in support of a contingency operation.

2) For such members, the active duty orders of a covered military member will generally specify whether the service member is serving in support of a contingency operation by citation to the relevant section of title 10 of the United States Code or by reference to the specific name of the contingency operation, or both. A military operation qualifies as a contingency operation if it:

- a. Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or
- b. Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301 (a), 12302, 12304, 12305, or 12406, or chapter 15 of title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress. (See 10 U.S.C. 101(a) (13).

Section 27.21

An employee must request leave under FMLA thirty (30) calendar days before the date leave is to begin. When unforeseeable circumstances prevent 30 days notice, the employee must contact the supervisor as soon as possible.

Section 27.22

A request for FMLA leave under Section 27.17 (c) and (d) of this Agreement must be supported by medical certification of the health care provider of the employee or the employee's spouse, son, daughter or parent consistent with 5 C.F.R. § 630.1207. Generally, the certificate will cover: (1) the date the health condition commenced; (2) the nature of the employee's incapacitation or treatment or the need for the employee to assist with a spouse, son, daughter or parent under treatment; and (3) the probable duration of the condition.

A request for FMLA leave under Section 27.17 (a) and (b) of this agreement must be accompanied by supporting documentation or an acceptable statement in the automated time and attendance system.

Section 27.23

An employee may elect to substitute paid time off, e.g., annual leave, sick leave (as appropriate), compensatory time off or credit hours, for leave without pay under the FMLA. The employee must notify his/her supervisor of this election prior to the date leave commences.

Section 27.24

Any other questions concerning FMLA leave will be covered by 5 C.F.R. §§ 630.1201 et seq., EEOC Order No. 550.007 and other applicable laws, government-wide rules and regulations.

E. Other Leave

Section 27.25

In accordance with applicable laws, government-wide rules, regulations, or EEOC Orders or directives, an employee is entitled to seven (7) days of excused absence each calendar year, without loss of pay, to serve as a bone-marrow or organ donor.

Section 27.26

Employees requiring time off for religious observance shall, at their option, make up the time by working compensatory overtime before or after the time off. Any employee who elects to work compensatory overtime for this purpose is entitled to an equal amount of compensatory time off

(hour for hour) from his/her scheduled tour of duty. A grant of advanced compensatory time off must be repaid by the appropriate amount of compensatory overtime within a mutually agreed upon time. An employee's request to work compensatory overtime or to take compensatory time off for this purpose may be disapproved by his or her supervisor if such modifications to work schedules would interfere with the efficient accomplishment of the Agency's mission.

Section 27.27

Employees shall be granted necessary time off without charge to leave or loss of pay for jury duty or to serve in non-official capacity as a witness on behalf of a Federal, State or local government.

Section 27.28

Employees who donate blood during blood drives may be granted up to a maximum of four (4) hours of excused absence commencing immediately after the donation. If necessary additional recuperative time will be provided; however, the total administrative leave will be limited to the remaining scheduled hours of duty.

F. Leave Without Pay

Section 27.29 It is recognized that leave without pay (LWOP) is a temporary non-pay status requested by the employee and authorized at the discretion of the EMPLOYER.

G. Excused Absences

Section 27.30

Election Leave: Employees may be excused to permit them to report for work three (3) hours after the polls open, or to leave work three (3) hours before the polls close, whichever results in the least amount of time absent from duty.

Section 27.31

Change of Duty Station: Non-temporary employees who are making a permanent change of official station may be granted administrative leave, not to exceed forty (40) hours, to make necessary pre and post moving arrangements. The employee shall make the request to the losing Director.

H. Military Leave:

Section 27.32

(a) Full time employees are entitled to leave without loss in pay, time, or performance or efficiency rating for active duty, inactive-duty training, funeral honors duty or engaging in field or coast defense training as a Reserve of the armed forces or member of the National Guard. Leave under this subsection accrues for an employee at the rate of 15 days per fiscal year and, to the extent that it is not used in a fiscal year, accumulates for use in the succeeding fiscal year until it totals 15 days at the beginning of a fiscal year.

(b) In the case of an employee or individual employed on a part-time career employment basis, the rate at which leave accrues under this subsection shall be a percentage of the rate prescribed

under paragraph (a) which is determined by dividing forty (40) into the number of hours in the regularly scheduled work week of that employee or individual during that fiscal year.

(c) The minimum charge for leave under this subsection is one (1) hour, and additional charges are in multiples thereof.

(d) An employee performing service with the uniformed services must be permitted, upon request, to use any accrued annual leave, military leave, earned compensatory time off for travel, or accrued sick leave (consistent with the statutory and regulatory criteria for using sick leave), during such service. An employee is entitled to use annual leave, military leave, earned compensatory time off for travel, or sick leave intermittently with leave without pay while on active duty or active/inactive duty training.

(e) An Agency employee who is also a member of the D.C. National Guard is entitled to additional military leave as provided in 5 U.S.C. 6323(c) to participate in a "parade or encampment." The law provides that this type of duty must be authorized under title 39 of the District of Columbia Code. Generally, this category of military leave is limited to drills and training under the authority of the Commanding General of the D.C. National Guard.

(f) A military reserve technician is entitled at such person's request to leave without loss of, or reduction in, pay, leave to which such person is otherwise entitled, credit for time or service, or performance or efficiency rating for each day, not to exceed forty-four (44) workdays in a calendar year, in which such person is on active duty without pay for participation in operations outside the United States, its territories and possessions.

(g) An employee who requests annual leave or compensatory time to which the employee is otherwise entitled, for a period during which the employee would have been entitled upon request to leave under this subsection, may be granted such annual leave or compensatory time.

Section 27.33

Any other questions concerning leave shall be governed by Section 27.01.

Article 28.00 Part-time Career Employment Program

Section 28.01

The Part-time Career Employment Program shall be administered in accordance with EEOC Order No. 520.001 and involves employment of sixteen (16) to thirty-two (32) hours a week with comparable adjustments made when working under a flexible work schedule. Part-time employment includes job sharing, which is the employment of two (2) or more employees in a position that was formerly full-time. If an employee wishes to change to part-time (or participate in job sharing), he/she must make a formal request to the immediate supervisor on EEOC Form 454, Request for Change to Part-Time Employment. EEOC Order No. 520.001 entitled Part-time Career Employment Program shall be posted on inSite.

Article 29.00 Hours of Work

Section 29.01

The administrative work week is a period of seven (7) consecutive calendar days within which the basic work week is included. The basic work week shall normally consist of five (5) work days, Monday through Friday. The occurrence of holidays shall not affect the designation of the basic work week. Wednesday shall be the only core day for all offices.

Section 29.02

Employees shall be entitled to all holidays prescribed by current or future law, in addition to any special holidays designated by the President of the United States.

Section 29.03

The EMPLOYER will maintain Flexible Work Schedule and Compressed Work Schedule Programs for employees.

Section 29.04

For the purposes of this Article, the following definitions shall apply:

- (a) "Basic work requirement" means the number of hours, excluding overtime hours, that an employee is required to work or is required to account for by leave or otherwise.
- (b) "Flexible work schedule" means a schedule in which the employee may vary the time of arrival and/or departure during the bi-weekly period. A flexible work schedule consists of core time and flexible time." The two requirements under any flexible work schedule are:
 - (1) Employee must be at work during core time; and
 - (2) Employee must account for the total number of hours he or she is scheduled to work in the bi-weekly period.
- (c) The Flexible Work Schedule Program shall consist of the following:
 - (1) Flexitour which is a type of flexible work schedule in which an employee has a basic work requirement of eight (8) hours in each day and forty (40) hours in each week and the employee is allowed to select starting and stopping times within the flexible time bands. Once selected, the schedule is fixed.
 - (2) Gliding Schedule which is a type of flexible work schedule in which an employee has a basic work requirement of eight (8) hours in each day and forty (40) hours in each week, and may select an arrival time each day and may change the arrival time daily as long as it is within the established flexible time band.
- (d) "Compressed Work Schedule" is any schedule under which a full-time employee fulfills an eighty (80) hour biweekly work week in less than ten (10) work days. Employees working a compressed Work Schedule must take their day off during the pay period in which the day off is earned. Compressed work schedules are always fixed.

The Compressed Work Schedule Program shall consist of:

(1) 5/4/9 in which employees work 80 hours in a bi-weekly pay period: eight 9-hour days, one 8-hour day and one day off; and

(2) 4/10 in which employees work 80 hours in a bi-weekly pay period: four 10-hour days with one day off each week.

(e) "Core time" or "Core hours" means that period of time when all employees are expected to be at work. Core hours must be scheduled between 6:00 a.m. and 6:00 p.m.

(f) "Flexible Time Band" is that portion of the work day during which the employee has the option to request starting and finishing times within established limits.

(g) "Credit hours" are hours that employees voluntarily elect to work in excess of their basic work requirements in order to vary the length of a work week or a work day, subject to manager's approval.

Section 29.05

(a) Employees in each office shall have the option to select either one (1) Flexible Work Schedule or one (1) Compressed Work Schedule program.

(b) Upon hire, new employees shall be eligible to select from Flexible or Compressed Work Schedule Programs consistent with the office's Hours of Work MOU.

Section 29.06

Under the Flexible Work Schedule and Compressed Work Schedule Programs, the flexible time band shall not obligate the Agency to pay a night differential.

Section 29.07 Credit Hour Provisions

(a) Subject to supervisory approval, employees on a Flexible Work Schedule may earn credit hours. Full-time employees may carry over from the prior pay period no more than twenty-four (24) credit hours.

Part-time employees may not carry over from the prior pay period any more than one-half of their weekly part-time tour. Accumulated credit hours not exceeding the carry-over caps may be used at any time, including during flexible and core time. Any hours directed to be worked in excess of twenty-four (24) credit hours shall be treated as overtime (non-exempt employees) or premium pay (exempt employees).

(b) In accordance with 5 U.S.C. § 6121(4), employees on Compressed Work Schedule Programs defined in Section 29.04 may not earn credit hours.

Section 29.08

Local negotiations shall address core time, flexible time bands, gliding provisions (i.e., grace period for arrivals and departures), off days and guidelines for resolving conflicts between coverage of the EMPLOYER's operations and an employee's requested tour of duty.

Section 29.09

(a) Employees who choose not to participate in the Flexible Work Schedule or Compressed Work Schedule Programs shall work the basic work week, five (5) days a week, according to the official duty hours of their respective offices.

(b) All employees shall be given the opportunity to select a Flexible Work Schedule or Compressed Work Schedule on a quarterly basis unless otherwise agreed.

Section 29.10

(a) The EMPLOYER may exclude or terminate a Flexible Work Schedule or Compressed Work Schedule Program at any facility, or portion thereof, in accordance with 5 U.S.C. § 6122(b), where the program causes a reduction in productivity, a diminished level of service furnished to the public or component of the EMPLOYER or an increase in the cost of the EMPLOYER's operations, other than those incidental to the start-up of the program. The EMPLOYER will bear the start-up costs of the Program.

(b) Specific employees may be excluded from the Flexible Work Schedule and/or Compressed Work Schedule Program(s) on the basis of documented attendance and/or misconduct problems related to time and attendance or poor performance or changing workload requirements where continued inclusion will have an adverse effect on the program or workload.

Section 29.11 Maxiflex Pilot Program

(a) Definition: Maxiflex is a type of flexible work schedule in which an employee may work eighty (80) hours in fewer than ten (10) days biweekly.

(b) Within 180 days from the effective date of this CBA, the Parties agree to meet and confer in accordance with Article 7.00, Labor-Management Negotiations Procedures, to jointly design and develop a Maxiflex Pilot Program.

Article 30.00 Overtime

Section 30.01 Definition of Work Schedules

(a) "Flexible Work Schedule" as defined in Section 29.04 (b).

(b) "Compressed Work Schedule" as defined in Section 29.04 (d).

(c) "Basic Work Schedule" as defined in Section 29.09 (a).

Section 30.02

The assignment of overtime work is a function of the EMPLOYER. The EMPLOYER retains the right to determine the need for overtime work. All overtime must be officially ordered or approved. (See Section 30.08).

Section 30.03

When the EMPLOYER determines that overtime is required, affected employees shall be given at least one (1) day's advance notice whenever possible. The EMPLOYER shall take reasonable precautions to alleviate adverse effects on employees when dealing with overtime work assignments.

Section 30.04

Overtime shall be distributed fairly among employees based upon skills, performance, availability and the nature of the work. It is understood that an employee who is satisfactorily performing a particular job during regular working hours shall be given first consideration and the opportunity to perform any overtime work that may be required on that job. Next consideration shall be given to those employees in the work unit who volunteer, who are qualified to perform the work and who can satisfactorily perform the job.

Section 30.05

If an employee is called back to work, any overtime work he/she performs will be considered to be at least two (2) hours in duration for overtime pay purposes.

Section 30.06

Overtime work must be authorized in advance, however, all required or approved work performed outside the basic work week shall be compensated in accordance with applicable overtime laws and regulations of OPM. It is the EMPLOYER's responsibility to ensure that the employee's workload can reasonably be accomplished within the employee's regularly scheduled workday or workweek. It shall be the employee's responsibility to inform the EMPLOYER whenever the assigned workload is requiring more time than normally scheduled.

Section 30.07

Non-exempt employees who work overtime shall be paid at the rate of one and one-half (1-1/2) times the rate of regular pay or within regulatory limits. In accordance with applicable law, government-wide rules or regulations, these employees may elect to receive compensatory time in lieu of pay. Non-exempt employees shall not work overtime when overtime pay is not available.

Section 30.08

All bargaining unit employees classified as non-exempt under the Fair Labor Standards Act shall be compensated in accordance with applicable laws and regulations for work performed as overtime. For employees to receive overtime, all overtime must be officially ordered or approved, and

- (a) Employees on a regular or flexible schedule must perform work beyond eight (8) hours in a day or forty (40) hours in a week, or
- (b) Employees on a compressed schedule who perform work in excess of the established compressed schedule. (For example, an employee on a compressed four ten-hour-day weekly schedule is entitled to overtime pay for work officially ordered and performed beyond the daily ten (10) hours or forty (40) hours for the week.)

Section 30.09

Compensatory time is time off in lieu of occasional or irregular overtime which has been approved in advance by the supervisor. All employees in positions which are non-exempt under FLSA and those exempt employees in positions whose basic rate of pay is below the maximum rate of GS-10 may

elect, but are not required to receive compensatory time in lieu of overtime. Compensatory time is earned in amounts equal to the overtime hours worked.

Section 30.10

Suffered or permitted work means any work performed by an employee for the benefit of the agency, whether requested or not, provided the employee's supervisor knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed. The concept of suffered and permitted is only applicable to employees covered by the Fair Labor Standards Act (FLSA) (non-exempt). Only employees working a basic work schedule or compressed work schedule may earn overtime under suffered or permitted work.

Section 30.11

Employees on a flexible schedule shall earn overtime in accordance with Article 29.00 Hours of Work, Section 29.07 of this agreement.

Section 30.12

Employees on telework must abide by the provisions of this Article.

Article 31.00 Rest Periods

Section 31.01

Employees shall be granted by their supervisors a rest period not to exceed 15 minutes during each four (4) hours of duty. Rest periods or lunch may not be used to shorten the employee's workday.

Article 32.00 Travel

Section 32.01

The EMPLOYER shall schedule travel so that, to the maximum extent practicable, the employees perform official travel during normal duty hours. If travel must be accomplished during non-duty hours or non-duty days, overtime pay or compensatory time shall be granted in accordance with applicable Federal law and regulations. Employees may not schedule travel outside normal duty hours without prior supervisory approval. The agency shall provide a link to the Federal Travel Regulations and any agency Directives on inSite.

Section 32.02

Employees who are selected for special travel situations such as training, details, conferences, meetings or other functions shall receive as much notice as is practicable prior to the expected travel. Upon notification of selection for special travel, an employee who needs a cash advance and has a government issued credit card shall obtain an advance using an Automated Teller Machine (ATM). ATM travel advances shall be withdrawn no earlier than three (3) working days prior to the departure date. No ATM withdrawal will be made after the last day of travel.

Those employees who do not have a government issued credit card and need a direct deposit (cash) advance shall request the EMPLOYER to submit an SF-1038, Advance of Funds Application and Account. To provide for enough processing time and direct deposit payment by the U.S. Treasury, the SF-1038's shall be submitted to the paying office no later than seven (7) work days prior to the trip for Headquarters employees or ten (10) workdays for Field office employees.

Travel advances shall be made available prior to the date of departure to those employees who make timely application.

Section 32.03

The Office Director or his/her designee is responsible for approving Official TDY Travel Authorizations. Employees are responsible for preparing and submitting travel authorizations on the agency's electronic travel system. Employees whose position requires travel shall be provided training on the applicable electronic travel system prior to the first official agency travel.

Section 32.04

Normally, employees shall receive travel orders sufficiently in advance to ensure that the necessary arrangements for obtaining the transportation request and advancements of travel and per diem allowances can be made during working hours. It is recognized that there will be instances where these arrangements must be made outside of the working hours to fulfill mission requirements, but in no circumstances will an employee be required or requested to travel without valid travel orders or advanced per diem in the form of direct deposits, and/or credit cards as appropriate, where the employee requires it. An employee's inability to travel without advance travel funds shall not affect future opportunities to travel nor be considered in any employee evaluations, employee appraisals, awards or future work assignments.

Section 32.05

Employees who are assigned to training or duty away from their regularly assigned duty station and who elect to return home during non-work days, will be reimbursed for travel not to exceed the amount reimbursable for the per diem had the employee remained away from home. For TDY exceeding fourteen (14) days, employees who elect to return home during non-work days, will be reimbursed for their total official round-trip transportation and per diem expenses. Total reimbursement of expenses will be limited to one round-trip every fourteen (14) days of the TDY assignment. In all instances, when returning home, the employee should check out of the lodging facility. Luggage should be stored pending return check-in.

Section 32.06

For all travel, the EMPLOYER will formally identify the recommended mode(s) of travel. An employee may select a mode of travel of his/her choice. Reimbursement will be in accordance with applicable rules and regulations, but generally will be no more than the recommended mode of travel.

Section 32.07

Travel vouchers shall be submitted by the employee in the agency's electronic system within five (5) work days after the completion of the trip, and shall be processed by the designated EMPLOYER Representative within ten (10) working days after submission for reimbursement.

Section 32.08

Employees required to travel by the EMPLOYER shall be reimbursed within thirty (30) days after an employee submits a proper travel claim to the EMPLOYER.

Section 32.09

Upon advance request to the EMPLOYER, an employee shall have the right to review his/her travel history and copies of other documents substantiating the travel history. The agency shall maintain travel records in accordance with government-wide rules and regulations.

Section 32.10

The EMPLOYER will take no action against employees for authorized expenses charged under the credit card program where the employees have timely submitted travel vouchers (SF-1012) to the National Business Center or its successor payment office and have not received the reimbursement described in Section 32.07.

Article 33.00 Telework Program

Section 33.01

The UNION and the EMPLOYER recognize circumstances where it is mutually beneficial for employees to perform work at sites other than the traditional office or at locations other than where work is typically performed. Such circumstances include, but are not limited to, accommodation of special needs, disabilities, energy or environmental conservation, savings in commuting costs, the need for an uninterrupted work environment, reduced costs or space savings. Employees and their supervisors may make Telework arrangements for purposes of promoting the efficiency of the government and fostering a family friendly EEOC. While Telework is not intended to be a substitute for family care, it may enhance the quality of family life through savings in commuting time. Telework must be voluntary and consistent with mission accomplishment and customer service. The Agency establishes this program consistent with applicable law, rule and regulation, including Public Law 106-346 and Public Law 111-292 (Telework Enhancement Act of 2010) 5 U.S.C. Chapter 65.

Section 33.02

For purposes of this Article, the terms "Telecommute", "Flexiplace" and "Telework" are synonymous. Work typically performed away from the office as a normal course of duty (e.g., on-site investigation and hearings) is not considered teleworking.

Section 33.03

Participation in the Telework Program is not a right. A new employee who is not serving a probationary period must be employed in his/her position (job title) for a period of six (6) months before he/she will be eligible to participate in the Telework Program. A new employee who is serving a probationary period normally must be employed in his/her position (job title) for a period of 12 months before he/she will be eligible to participate in the Telework Program, unless the supervisor determines that the employee may participate earlier.

Section 33.04

Within 120 calendar days of the effective date of this agreement, the EMPLOYER, in consultation with the UNION, shall implement a Telework Program in every EEOC Office. The implementation of the Telework Program must take into account the specific needs of each office with regard to customer service and office coverage. Implementation of the Telework Program in Field Offices must specifically take into account the need to cover Intake responsibilities.

In the event that the EMPLOYER decides to revise or implement national forms, the parties shall meet and confer on those national forms (e.g., a uniform evaluation and tracking form, employer/supervisor checklist, and sample employee/supervisor work agreement) which will be used in the Telework Program.

Section 33.05

Office Directors (Headquarters, District, Area, Local and Field), in consultation with the LOCAL UNION, may designate some jobs as unsuitable for participation in the Telework Program. The principal factors determining suitability are:

- (a) Degree of contact with clients or co-workers;
- (b) Computers or telecommunications as enabling technologies;
- (c) Degree of supervision required;
- (d) Dependence of co-workers;
- (e) Dependence on files, databases and references; and
- (f) Measurability of successful completion of assigned tasks.

Section 33.06

Employees participating in the Telework Program must be accessible and available for recall to their regular duty stations. Employees may be called back for emergencies, or to deal with urgent work assignments.

Section 33.07

Participating employees in the Telework Program and their supervisors must sign Work Agreements that outline the terms and conditions of work at home arrangements. The Work Agreement will cover such items as the voluntary nature of the arrangement; hours of duty; timing and format of requests to work at home as set forth in Section 33.09 below; responsibility for timekeeping; leave approval; and requests for overtime and compensatory time.

Section 33.08

The EMPLOYER and UNION recognize that the Telework Program and the Compressed Work Schedule are two measures designed to help make the EEOC a model workplace. The EMPLOYER and UNION further acknowledge that the practical effects of these two programs must be factored into their implementation. The EMPLOYER and UNION therefore agree that an employee may be absent from their official duty station for up to **five (5) days** per pay period through the combined operation of these two programs.

On a case-by-case basis, a supervisor may approve additional work at home days to cover special projects or work assignments.

Participation in the Telework Program for employees working in Local Offices is limited to one (1) day per week.

The Parties agree that offices that relocate or reconfigure their space after signing this agreement will use creative space designs including shared space, work stations and cubicles to reduce office space by 20% to reduce rent and associated costs.

Section 33.09

Although the implementation of a Telework Program will be done by individual offices, the following conditions or requirements shall be applicable to each office:

(a) Participation in the Telework Program will be voluntary for the employee; however, the employee's supervisor's concurrence is required.

(b) Employees participating in the Telework Program must establish a specific room or area, which is adequate, safe and equipped for performance of the employee's duties. The at home work space must be approved by a supervisor after an on-site inspection or based upon the employee's written description of the on-site area.

(c) Employees participating in the Telework Program must provide a telephone number to his or her supervisor. This telephone number will be made available by the supervisor to other staff members as necessary so that the work of the office can proceed without interruption. Employees participating in the Telework Program must be responsive to calls from the office. Participants will also be expected to check their office voice mail and e-mail throughout the work day, and respond as appropriate.

(d) An employee participating in the Telework Program, with the supervisor, will identify the specific assignments to be performed while working at home. The employee's supervisor must agree that the work is available and is of sufficient quantity to fill the employee's tour of duty prior to approving the employee's request to work at home. The employee's identification of work and the supervisor's approval may be on a daily basis, but in no event may extend beyond a single pay period.

(e) The employee's current performance plan will govern work completed at the employee's residence (alternate duty station) as well as work completed at the office (official duty station). The employee will complete all assigned work according to work procedures mutually agreed upon by the employee and the supervisor and according to guidelines and standards stated in the employee's performance plan. The employee will meet with the supervisor to review work performed at the alternate work site as necessary or appropriate.

(f) The EMPLOYER will not pay to install computers, computer software, and computer hardware or telephone equipment at an employee's home in order for the employee to participate in the Telework Program. If available, loaner computer equipment may be provided for use at the employee's home. The employee shall be responsible for servicing and maintaining his/her own equipment in proper operating condition.

(g) The Government will not be liable for damages to an employee's personal or real property during the course of performance of official duties or while using Government equipment in the employee's residence, except to the extent the Government is held liable by Federal Tort Claims Act (28 U.S.C. §§ 2671 et seq., claims or claims arising under the Military Personnel and Civilian Employees Claims Act (31 U.S.C. §§ 3721 et seq.).

(h) The Government will not be responsible for operating costs, home maintenance, or any other incidental cost, (e.g., utilities) whatsoever, associated with the use of the employee's residence. By participating in the Telework Program the employee does not relinquish any entitlement to

reimbursement for authorized expenses incurred while conducting business for the Government, as provided for by statute and implementing regulations.

(i) The employee will apply safeguards to protect Government Agency records from unauthorized disclosure or damage and will comply with the Privacy Act requirements set forth in 5 U.S.C. § 552a. Inventory shall be kept on all EMPLOYER records taken to an employee's home. Such records shall be promptly returned intact to the official duty station upon completion of their use by the employee.

(j) Employees working at home will be covered under the Federal Employees' Compensation Act if injured in the course of performing official duties at the official duty station or the alternate duty station to the extent provided under the Act.

(k) The employee agrees to limit his/her performance of his/her officially assigned duties to his/her official duty station or to Agency approved alternate duty stations. Failure to comply with this provision may result in loss of pay, termination of the Telework Program arrangement, and/or other appropriate disciplinary action.

(l) The employee may terminate participation in the Telework Program at any time.

Section 33.10

Supervisors may remove employees from the Telework Program if:

(a) The employee fails to perform the work he or she identified would be performed while working at home as set forth in Section 33.09(e);

(b) The employee's performance declines below the proficient level;

(c) Performance standards are not being met or conduct is unacceptable;

(d) Reassignment causes a change of work;

(e) Employees do not conform with the terms of their agreement;

(f) The employee fails to take or return calls from the office within a reasonable period of time;

(g) The supervisor becomes aware that the employee is combining work-at home with child care, elder care or other non-work related matters; or

(h) The employee has failed to be accessible and available for recall to their regular duty stations in the event of an emergency, or the need to address an urgent work related issue.

Section 33.11

The EMPLOYER and UNION recognize that evaluation of the Telework Program is critical to determining its effectiveness. To facilitate the evaluation of the Telework Program, the EMPLOYER and the UNION will jointly develop an evaluation instrument to be used in conducting an annual review of the Program.

Section 33.12

The EMPLOYER, with notification to the UNION, may terminate the Telework Program if the program no longer supports the mission of the agency or costs of the program become impracticable. If the Telework Program no longer benefits organizational needs, termination of the program must be in accordance with procedures established by the Collective Bargaining Agreement.

Article 34.00 **Charity Drives**

Section 34.01

The Parties agree that employees are encouraged to participate in the Combined Federal Campaign, blood donor drives, bond campaigns and authorized office collections. Any such participation, including contributions, by an employee, in whatever manner, shall be on a voluntary basis.

Section 34.02

Nothing shall prevent the EMPLOYER from publicizing such programs and from demonstrating support and encouragement for participation in such programs.

Section 34.03

With respect to Section 34.01, the EMPLOYER agrees that the following activities are not permitted:

- (a) Supervisory solicitation of employees;
- (b) Supervisory inquiries about an employee's decision whether or not to participate in a campaign;
- (c) Setting of 100 percent participation goals;
- (d) Establishing personal goals and quotas;
- (e) Providing and using contributor lists for purposes other than the routine collection and forwarding of contributions and allotments; and
- (f) Developing and using lists of non-contributors.

Section 34.04

While both the EMPLOYER and the UNION recognize the benefit of worthy campaigns and drives, there shall be no reprisal or discrimination against an employee who chooses not to participate or contribute.

Article 35.00 **Eating Facilities**

Section 35.01

The EMPLOYER shall make every reasonable attempt to provide a break room which shall be properly cleaned, heated and ventilated. When such is not possible, the Parties shall negotiate other appropriate arrangements.

Section 35.02

The EMPLOYER shall make every reasonable attempt to provide vending machines or other service of food and beverages at any Agency site where meal facilities are not available during regular working hours.

Article 36.00 Auto Parking, Bicycle Racks and Transit Subsidies

Section 36.01

In a sincere attempt to conserve energy, the EMPLOYER agrees that secure and protected bicycle, motorcycle and moped racks will be made available to employees where necessary and permitted by building regulations, within budgetary restrictions.

Section 36.02

The EMPLOYER agrees that where space is leased or purchased by the EMPLOYER, the EMPLOYER will negotiate with the UNION procedures for the assignment of space to bargaining unit employees prior to making such space assignments.

Section 36.03

Where automobile parking space becomes available free of charge, the EMPLOYER shall negotiate with the UNION procedures for assignment of space prior to assignment, pursuant to Office of Management and Budget rules and regulations.

Section 36.04

In an attempt to reduce rush hour congestion, the Parties agree to promote car pooling. The EMPLOYER will provide space on a bulletin board for employees interested in car pooling to provide notice to fellow employees with the same interest. The EMPLOYER also agrees to publicize the availability of the car pooling boards and to encourage their usage.

Section 36.05

Consistent with government wide rules and regulations, the EMPLOYER will provide notice of the available transit, parking or other subsidy programs approved by the EMPLOYER. Such notice will be provided within a reasonable time before implementation and at least annually thereafter. The EMPLOYER will make available all reporting or other forms necessary for employees to participate in such programs.

Article 37.00 Disciplinary Action

Section 37.01

Disciplinary action means action taken to correct an employee's conduct deficiencies (work-related behavior). Disciplinary actions include Letters of Warning and Letters of Reprimand. The Parties agree to the concept of progressive discipline designed primarily to correct and improve employee behavior.

Section 37.02

Disciplinary actions include the following:

(a) Letters of Warning - Supervisors may issue Letter(s) of Warning to employees under their supervision. The Letter shall explain the reasons for the warning and how the conduct may be corrected. Additionally, the letter shall contain a warning of stronger disciplinary action in the event of future misconduct. The letter of warning shall not be placed in the employee's e-OPF.

(b) Letters of Reprimand - Supervisors may issue Letter(s) of Reprimand to employees under their supervision. The Letter will explain the reason(s) for the reprimand and how the conduct may be corrected. The Letter will also include a warning of more severe consequences if the misconduct is not corrected. The letter shall also inform the employee that the reprimand will be filed in the employee's e-OPF for a period of up to 12 months. The Letter shall also inform the employee of the right to grieve the reprimand. The Letter of Reprimand shall be removed at any time it is determined that the action was unwarranted or unjustified.

Section 37.03

Disciplinary action shall be taken at the earliest stage needed to correct the conduct deficiencies that have occurred. Disciplinary action shall be timely. Timeliness shall be based upon the circumstances and complexity of each case.

Section 37.04

Upon request, all written documents which contain evidence relied upon by the EMPLOYER to form the basis for disciplinary action, including witness statements, will be made available to the employee or his/her Representative.

Section 37.05

The first line supervisor will normally effect the disciplinary action. However, the EMPLOYER may designate anyone in the employee's chain of command to initiate disciplinary action.

Article 38.00 Adverse Action

Section 38.01

The EMPLOYER may take adverse actions to address misconduct. Adverse actions include the following: suspensions, reductions in pay or grade, removals and furloughs of thirty (30) calendar days or less. Such actions should be taken in accordance with Federal regulations and this Agreement.

This Article shall not apply to temporary or probationary employees, employees serving trial periods, non-preference eligible excepted service employees who have not completed two (2) years of current continuous service in the same or similar positions or preference eligible excepted service employees who have not completed one (1) year of continuous service in the same or similar positions or employees in the competitive service who have not completed one (1) year of current continuous employment under an appointment other than a temporary appointment limited to one (1) year or less.

Section 38.02

If the UNION is designated by an employee in an adverse action proceeding, the employee and/or UNION shall provide the EMPLOYER with the name and address of the designated Representative

in writing, pursuant to Article 9.00 of this Agreement. All correspondence addressed to the employee shall be simultaneously provided to the UNION Representative.

Section 38.03

Upon request, all written documents (including portions of investigative reports, if applicable) which contain any evidence relied upon by the EMPLOYER to form the basis for any adverse action shall be made available to the employee or designated Representative.

Section 38.04

Employees against whom an adverse action is proposed shall receive at least fifteen (15) calendar days advance written notice of a decision proposing to suspend for fourteen (14) days or less and shall receive at least thirty (30) calendar days advance written notice for proposed suspension in excess of fourteen (14) days, reductions in grade or pay, removal or furlough for less than thirty (30) days. If there is reason to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed, the Agency may provide the minimum notice required by law or regulation.

The notice of proposed action shall contain the following:

- (a) A statement of the specific reasons for the proposed adverse action;
- (b) A statement of the right to respond orally and in writing to the proposed action, the right to submit affidavits or documentary evidence in support of the answer and to be represented by the UNION or another representative of the employee's choice;
- (c) A statement of the time period allowed for the employee to answer orally and in writing. The statement shall provide that from receipt of the notice, the employee has seven (7) calendar days to answer if the proposed action is a suspension of fourteen (14) days or less, or fifteen (15) calendar days to answer if the proposed action is a more severe adverse action. The notice shall also state that a request for an extension of time may be granted if made in writing to the Deciding Official, setting forth the reason(s) for the extension;
- (d) A statement that upon request, the employee shall be granted a reasonable amount of duty time to prepare an answer to the proposed adverse action. Normally, this time shall not exceed four (4) hours for a suspension of fourteen (14) days or less and eight (8) hours for a more severe adverse action. Granting a reasonable period of duty time to prepare a response does not extend the time allowed to answer; and
- (e) A statement informing the employee that a final decision has not been made and that the employee will be notified of the final decision after his/her answer has been considered or after the time allowed for an answer, if none is received.

Section 38.05

If the employee responds to the proposal, the response (oral and/or written) will be received and considered by the Deciding Official or his/her designee. The employee's answer will be given full consideration before a final decision is reached.

Section 38.06

An adverse action file shall be established which contains: the notice of proposed adverse action; the employee's written answer and a summary of the oral answer, if any; related correspondence and/or other evidence relied upon to support the reasons for the proposed action. This may include affidavits, names of witnesses and their statements that were relied upon or other statements, reports, exhibits, excerpts from investigative reports and any other material used to support the adverse action. The adverse action file shall be available to the employee or designated Representative for review at the employee's/designated Representative's request.

Section 38.07

The Deciding Official shall issue a decision to the employee either sustaining, modifying or canceling the Notice of Proposed Adverse Action. With the exception of employees defined in Section 38.08, such decision shall be issued pursuant to 5 C.F.R. §§ 752.203, 752.404, 752.405, as appropriate.

Section 38.08

Access to the negotiated grievance procedure for matters covered by this Article shall not apply to probationary employees, employees serving trial periods, non-preference eligible excepted service employees who have not completed two (2) years of current continuous service in the same or similar positions or preference eligible excepted service employees who have not completed one (1) year of current continuous service in the same or similar positions or employees in the competitive service who have not completed one (1) year of current continuous employment under an appointment other than a temporary appointment limited to one (1) year or less.

Article 39.00 Reduction-in-Grade and Removals Based on Unacceptable Performance

An employee covered by the Performance Appraisal System pursuant to 5 C.F.R. Part 430 may be reduced in grade or removed from the Federal service for unacceptable performance in accordance with 5 C.F.R. Part 432.

The provisions of this Article do not apply to employees in the competitive service who are serving probationary or trial periods under an initial appointment, employees in the competitive service serving in a type of appointment that requires no probationary or trial period who have not completed one (1) year of current continuous employment in the same or similar positions under other than a temporary appointment limited to one (1) year or less, or employees in the excepted service who have not completed one (1) year of current continuous employment in the same or similar position. Access to the negotiated grievance procedure for actions under this Article is not available to non-preference eligible service employees with less than two (2) years current continuous employment in the same or similar positions.

Section 39.01

For the purposes of this Agreement, reduction-in-grade means the involuntary assignment of an employee to a position at a lower classification or job grade level.

Removal means the involuntary separation of an employee from employment with the EMPLOYER except when taken as a reduction-in-force action.

Section 39.02

At any time during the performance appraisal cycle that an employee's performance is determined to be unacceptable in one (1) or more critical element(s) of his/her position, the employee shall be placed on a Performance Improvement Plan (PIP) and given a reasonable opportunity to demonstrate acceptable performance and to correct any noted deficiencies.

The PIP shall be in writing and include the following:

- (a) The critical elements and performance standards in which the employee's performance is unacceptable;
- (b) The performance requirements or standards which must be met to demonstrate acceptable performance;
- (c) An offer of supervisory assistance in improving unacceptable performance; and
- (d) The possible consequences of failure to improve performance to an acceptable level and sustain an acceptable level of performance for at least one (1) year from the start of the PIP period.

Section 39.03

If at the completion of the PIP period, the supervisor determines that the employee's performance is at an acceptable level, the supervisor shall so advise the employee.

Section 39.04

If at the end of the PIP period, the employee's performance in one (1) or more critical elements continues to be unacceptable, the EMPLOYER may propose to reduce in grade or remove the employee in accordance with 5 C.F.R. Part 432.

Section 39.05

A proposal to reduce in grade or remove an employee may be based only on those instances of unacceptable performance which occurred during the one (1) year period ending on the date of the notice of proposed reduction-in-grade or removal.

Section 39.06

If an employee successfully completes a PIP but within one (1) year from the beginning of the PIP, the employee's performance falls to the unacceptable level in the same critical element(s) for which the employee was afforded an opportunity to demonstrate acceptable performance, the EMPLOYER may propose a removal or reduction-in-grade without placing the employee on another PIP. However, if the employee's performance falls to an unacceptable level in a different critical element than that which the employee was provided an opportunity to demonstrate acceptable performance, the employee shall be placed on a PIP as provided for under 5 C.F.R. § 432.104.

Section 39.07

The Proposing Official will give the employee a thirty (30) calendar-day advance written notice of the proposed action in accordance with 5 C.F.R. Part 432.

Section 39.08

Upon request, the employee shall be granted a reasonable amount of duty time to prepare a response to the proposed adverse action.

Section 39.09

The employee shall be afforded an opportunity to respond to the proposal orally and in writing. The right to answer orally does not include the right to a formal hearing with examination of witnesses. The Official who hears the oral reply shall make a written summary of it.

Section 39.10

The Deciding Official shall issue a decision in accordance with the provisions of 5 C.F.R. Part 432.

Section 39.11

When the employee is not reduced in grade or removed because of improved performance during the advance notice period, and the employee's performance continues to be acceptable for one (1) year from the date of the advance written notice, then any entry or other notation of the unacceptable performance for which the action was proposed, shall be removed from any Agency record relating to the employee.

Section 39.12

When it becomes necessary to mail any of the notices under the provisions of this Article, the EMPLOYER shall do so by certified mail to the employee's address of record. Employees are responsible for ensuring that the EMPLOYER's records accurately reflect their current mailing address.

Section 39.13

Whenever the EMPLOYER reduces in grade or removes an employee under this Article, the EMPLOYER shall establish a performance-based action file which consists of: a copy of the notice of proposed action, the answer of the employee when it is in writing, a summary thereof when the employee makes an oral reply, the written notice of decision and the reasons therefore and any supporting material, including documentation, regarding the opportunity afforded the employee to demonstrate acceptable performance.

Article 40.00 Negotiated Grievance Procedures

Section 40.01 Purpose

Where disputes arise concerning the interpretation or application of this Agreement or of applicable law or regulation, or a breach thereof is alleged to have occurred, the Parties agree to discuss the allegations and attempt informal resolution of the disputes. If informal resolutions fail to resolve the matters in dispute, the grievance - arbitration provisions of this Agreement shall be the sole avenue available to the Parties for resolution of these disputes, except as otherwise provided by applicable law, rule or regulation. The Parties agree that every good faith effort will be expended to resolve all grievances at the lowest supervisory level with the authority to resolve the matter. The EMPLOYER recognizes the right of the employee(s) and/or UNION to file a grievance(s) under this Article without fear of retaliation.

Section 40.02 Scope

- (a) A grievance under these procedures shall mean a complaint:
- (1) By any employee concerning any matter relating to the employment of the employee;
 - (2) By the UNION concerning any matter relating to the employment of any employee; or
 - (3) By any employee or the UNION concerning:
 - (A) The effect or interpretation or a claim of breach of this Agreement; and/or
 - (B) Any claimed violation, misinterpretation or misapplication of any law, rule or regulation affecting conditions of employment.
- (b) These procedures do not apply to any matter excluded by 5 U.S.C. § 7121(c) of the Civil Service Reform Act of 1978 (CSRA) or statutory changes thereto as follows:
- (1) Any claimed violation of 5 U.S.C. §§ 7321 et seq. (relating to prohibited political activities);
 - (2) Retirement, health insurance or life insurance;
 - (3) A suspension or removal under 5 U.S.C. § 7532;
 - (4) Any examination, certification or appointment; or
 - (5) The classification of any position which does not result in the reduction-in-grade or pay of any employee.

Section 40.03 Questions of Grievability

Questions of grievability or arbitrability based upon technical or procedural aspects of a grievance shall be deemed waived unless raised before the conclusion of Step 3 of the procedure. Questions of grievability or arbitrability based upon an Arbitrator's authority to rule on or hear an issue may be raised at any time. In the event that the EMPLOYER should declare a grievance non-grievable or non-arbitrable, all disputes of grievability or arbitrability shall be referred to arbitration as a threshold issue. The threshold issue shall be ruled upon first. If the grievance is found to be arbitrable, the Arbitrator shall hear the merits of the central issue.

Section 40.04 Reasonable Time

Employees, including those who represent themselves, and UNION Representatives shall be allowed reasonable time to discuss and process grievances, including attendance at meetings with EMPLOYER officials. UNION Representatives shall be allowed reasonable time pursuant to Article 9.00, UNION Representation and Official Time. Employees shall be granted a reasonable amount of time, normally up to two and one-half (2 1/2) hours, to prepare his/her grievance prior to the filing of such grievance.

Section 40.05 Statutory Election

An aggrieved employee affected by a removal or reduction-in-grade based on unacceptable performance or adverse action may at his/her option raise the matter under either the statutory appellate procedure or the negotiated grievance procedure, but not both. An aggrieved employee affected by discrimination or any other prohibited personnel practice under 5 U.S.C. § 2302 (b)(1) of the CSRA may at his/her option raise the matter under a statutory procedure or the negotiated grievance procedure, but not both.

The filing of a negotiated grievance under this Article prior to invoking any applicable statutory procedure constitutes an election of the negotiated grievance procedure over any statutory procedure.

This election occurs with the filing of a written grievance at Step 1.

Section 40.06 Expedited Procedure

Step 1.

(a) Any grievance which involves a removal or reduction-in-grade shall first be filed under this procedure at the Agency Head level within thirty (30) calendar days after the effective date of the action, or appealed under the statutory appeals procedure in accordance with rules and regulations governing such appeals. Requests for extension of time should be filed with the Director, Employee and Labor Relations Division.

(b) In cases where the employee or UNION has elected to file a grievance under this Section, the EMPLOYER shall have thirty (30) calendar days from the filing of the grievance to issue a written decision.

Step 2.

If the matter is not satisfactorily resolved at Step 1, the UNION may invoke arbitration under Article 41.00 within thirty (30) calendar days of the issuance of the expedited decision by written notification to the Director, Employee and Labor Relations Division.

Section 40.07 Regular Grievance Procedure

Step 1

Except as provided for in Section 40.06, an employee challenging a matter covered by the negotiated grievance procedure may first present the matter orally to his/her supervisor, or other appropriate EMPLOYER Representative, either alone or with his/her Representative designated in writing. The EMPLOYER Representative shall consider all the facts and attempt to resolve the matter. The designation of a UNION Representative authorizes such Representative to speak and/or act on behalf of the grievant. If the matter is not satisfactorily resolved after the oral presentation, the grievant, either alone or with the assistance of a UNION Representative, may file a grievance in writing with his/her supervisor or other appropriate EMPLOYER Representative. Written grievances must be filed within thirty (30) calendar days after the incident giving rise to the grievance occurs. An employee who presents his/her grievance without UNION representation will be allowed a reasonable amount of duty time, not to exceed two and one-half (2-1/2) hours, to process his/her grievance. For good cause shown, such time limits may be extended by the EMPLOYER.

If an employee presents a grievance on his/her own behalf directly to the EMPLOYER for adjustment, the UNION shall be timely notified and shall have the right to be present during the grievance proceeding.

A written grievance at a minimum shall:

- (a) Identify the employee and office;
- (b) Identify the incident and the date it occurred;
- (c) Cite specific Article(s) and Section(s) of this Agreement or regulation(s) or law(s) alleged to have been violated or misapplied;
- (d) Specify how the Agreement, law or regulation has been violated;
- (e) Specify the remedy sought;
- (f) Request discussion, if desired; and
- (g) Include a copy of the information submitted in support of the grievance at each step.

The supervisor or other appropriate EMPLOYER Representative shall give full consideration to all available facts and issue a decision to the employee or designated UNION Representative in writing within thirty (30) calendar days after filing of the written grievance.

Step 2.

If the matter is not satisfactorily resolved in Step 1, the employee or the designated UNION Representative may within thirty (30) calendar days of the issuance of the Step I decision, file the matter in writing with the District or Headquarters Office Director or the Washington Field Office Director, as appropriate.

All matters dealing with the performance of Field Office Legal Unit staff, such as performance-based actions (promotion, assignment, etc.), shall be filed in writing with the Regional Attorney. If the Regional Attorney was the Step 1 EMPLOYER representative, then Step 2 shall be filed with the Deputy General Counselor or his/her designee. All other issues (non-performance-based issues) shall be filed with the District, Headquarters or Washington Field Office Director, as appropriate.

Upon request, the EMPLOYER Representative shall meet and discuss the matter with the UNION Representative and the grievant, if the grievant so desires, prior to rendering a written decision. The EMPLOYER Representative shall issue a written decision to the employee or designated UNION Representative within thirty (30) calendar days after filing of the Step I appeal. Any issues not raised in the grievance by Step 2 are waived.

Step 3.

If the grievance is not satisfactorily resolved, the employee or designated UNION Representative may, within thirty (30) calendar days of the issuance of the Step 2 decision, file the matter with the

Agency Head, or his/her designee for resolution. A decision shall be issued within thirty (30) calendar days after the filing of the Step 2 appeal. If the grievance is not satisfactorily resolved, the UNION may invoke arbitration under Article 41.00 within thirty (30) calendar days of the issuance of the Step 3 decision by written notification to the Director, Employee and Labor Relations Division. Only the UNION may invoke arbitration.

Section 40.08 Time Limitations

All time limits under this Article may be extended by mutual consent of the Parties. Failure of an EMPLOYER Representative to meet the time limits provided means the grievance is denied and the employee or his/her Representative may proceed to the next step. EMPLOYER responses submitted in an untimely manner or after the grievance has been elevated to the next step shall not be admissible at levels after they were due, including at arbitration, without the mutual consent of the Parties. Failure of an employee to meet the time limits imposed means that the grievance may be dismissed by the EMPLOYER unless the employee can present compelling evidence for the failure to meet the time constraints.

Section 40.09 Filing and Issuance

For purposes of this Article, "filing" and "issuance" are defined as follows:

- (a) For the Expedited Procedure under Section 40.06, filing is determined by postmarked mail;
- (b) For the Regular Grievance Procedure under Section 40.07:
 - (1) Filing at Step 1 is determined by date of receipt by the supervisor or other EMPLOYER Representative or by postmarked mail if the designated UNION Representative is not located in the same facility as the supervisor or EMPLOYER Representative;
 - (2) Filing at Step 2 is determined by date of receipt by the District or Headquarters Office Director, Washington Field Office Director or Deputy General Counsel if that official is located at the same facility as the grievant or designated UNION Representative, or by postmarked mail if the appropriate EMPLOYER Representative is not located in the same facility as the grievant or the designated UNION Representative;
 - (3) Filing at Step 3 shall also be determined by postmarked mail;
 - (4) Date of invocation of arbitration by the UNION shall be determined by postmarked mail to the Director, Employee and Labor Relations Division.
- (c) At all steps of the Expedited and Regular Grievance Procedures, the date of issuance is determined by date of receipt by the grievant or his/her representative if the grievant is located at the same facility as the appropriate EMPLOYER Representative, and by postmarked mail, if the grievant or his/her representative is not located in the same facility as the appropriate EMPLOYER Representative.

Section 40.10

Within 120 days of the signing of this Agreement, the parties agree to meet to explore and develop electronic grievance and arbitration processes. Until the processes are developed and implemented, no grievance under this Article shall be filed by facsimile machine (FAX) or electronic mail.

Article 41.00 Arbitration

Section 41.01 Purpose

The Parties acknowledge that their interests and those of the employees are best served by providing economical and expeditious arbitration procedures to promptly and finally resolve disputes which other good faith means have failed to resolve. The EMPLOYER and the UNION further acknowledge that flexible arbitration procedures that facilitate access to mutually designated Federal Sector Arbitrators thoroughly familiar with the terms and conditions of this Agreement provide the Parties with the opportunity to use streamlined, efficient and cost-effective dispute resolution machinery. Therefore, in order to effectuate those purposes, the Parties agree that any issue(s) not properly resolved through the negotiated grievance procedures set forth in Article 40.00 shall be subject to the right of the UNION to invoke binding arbitration only under the procedures contained in this Article. Issue(s) may be referred to an Arbitrator. The right to invoke binding arbitration under this Article is limited to the UNION; an employee may not independently invoke any of the provisions of this Article. The time frames apply to both the expedited and regular grievance procedures. These time frames may be extended by mutual agreement of the Parties.

Section 41.02 Selection of the Arbitrator

When arbitration is invoked, the UNION shall, within five (5) calendar days, request the Federal Mediation and Conciliation Service (FMCS) to submit a list of seven (7) Arbitrators to the UNION and the EMPLOYER's Employee and Labor Relations Division. Within five (5) calendar days after receipt of the list, the Parties shall select an Arbitrator by each alternately striking off one (1) name from the list and the name remaining on the said list shall be the Arbitrator. Time limits may be extended by mutual consent.

If either Party refuses to act under this selection procedure or unduly delays the selection process, unless time limits have been extended by mutual agreement, the other Party shall return its list to the FMCS indicating its first (1st), second (2nd) and third (3rd) preferences of an Arbitrator, and it is agreed that the FMCS shall be empowered to appoint the available Arbitrator in accordance with the preference indicated.

Section 41.03 Duties of the Arbitrator

The Parties agree to establish the following duties of the Arbitrator:

- (a) The duties of the Arbitrator shall be to hear and issue final and binding decisions on all grievances referred to him/her for arbitration in accordance with procedures established herein;
- (b) Performing the functions delineated in §41.03(a), the Arbitrator shall:
 - (1) Operate under the Code of Ethics and Procedural Standards for Labor Management Arbitration and the rules of the American Arbitration Association unless otherwise specified in this Article;
 - (2) Interpret the provisions of this Agreement in such a manner as not to add to, subtract from or otherwise modify the terms of this Agreement or the intent of the Parties;
 - (3) In deciding or making awards, apply relevant provisions of this Agreement, the Civil Service Reform Act and other applicable laws, rules and regulations; and

(4) Take into consideration precedents of appropriate administrative and judicial authorities by which the Parties are bound by law or government-wide rule or regulation.

(c) The Arbitrator's fees and expenses shall be borne equally by the Parties.

(d) All disputes as to the arbitrability or grievability of a matter which were properly raised in accordance with Section 40.03 of the negotiated grievance procedures shall be referred to the Arbitrator as a threshold issue and shall initially be decided by the Arbitrator. Such issues shall be resolved in accordance with Section 40.03.

(e) The Arbitrator may disqualify himself/herself from any matter in arbitration which in his/her judgment would constitute a real or potential conflict of interest. In such cases, the Arbitrator shall so notify the Parties and explain the nature of the conflict. In the event of any disqualification, the Parties shall select a new Arbitrator pursuant to this Article.

Section 41.04 Procedures for Arbitrations

(a) UNION may elect to invoke arbitration at the National or Local level. Arbitrations shall be invoked in writing, pursuant to the provisions of Section 40.06 Expedited Procedure or Section 40.07 Regular Grievance Procedure.

(b) The written request to arbitrate shall be served upon the Director, Employee and Labor Relations Division (ELRD) or his/her designee, as appropriate. The request shall be dated and shall identify the grievant by name and/or number, issues(s) raised in the grievance and the specific contract provision(s) in dispute, the relief sought and the name of the Representative. The UNION shall not raise issues which were not stated and considered as part of the grievance under Article 40.00 Negotiated Grievance Procedures.

(c) The following procedures shall apply to all arbitrations. At least thirty (30) calendar days prior to the scheduled date of arbitration, each Party shall submit to the Arbitrator and the other Party, in writing, the following:

(1) A detailed statement of facts from which the grievance arose;

(2) A specific statement of the issues in dispute, the relevant legal and factual arguments, the contractual provisions that apply and the requested remedy;

(3) A prospective witness list to include address, telephone number and summary of expected testimony;

(4) Supporting documentation, evidence and proposed exhibits; and

(5) A proposed time and site for arbitration.

At the same time, a copy of the complete grievance file shall be supplied to the Arbitrator and constitute a joint exhibit of the Parties.

(d) No later than ten (10) calendar days prior to the hearing, the Arbitrator will conduct a pre-hearing conference. This conference may be conducted by telephone. The purpose of the

conference is to insure compliance with the provisions of Section 41.04(c). At this time, the Arbitrator will determine and set forth the issues as presented by the Parties, determine whether a hearing is necessary as opposed to written submissions, set the time and place of the hearing if that has not already been done, resolve any matters concerning the Parties' witness lists or any other preliminary matters, including the submission of exhibits and/or joint exhibits. In the event a hearing is necessary and the Parties cannot agree on the issues to be arbitrated or challenged, the appearance of witnesses or the adequacy of compliance by the other Party with its obligation to produce supporting documentation and evidence, the Arbitrator shall review the grievance file and the submissions of the Parties and any arguments concerning whether or not there has been compliance and shall, prior to the date of the arbitration, rule on the arguments and challenges.

(e) Normally the arbitration hearing will be held at the EMPLOYER's site in the Office where the grievance arose. Each Party shall be responsible for the travel and per diem expenses of its own witnesses and representatives unless otherwise agreed.

(f) At the hearing, the Arbitrator shall have the obligation of assuring that pertinent and necessary facts are presented. Only evidence or arguments relevant to the issues determined for arbitration shall be introduced by either Party. Testimony or evidence as to any other issues shall be excluded by the Arbitrator. The Arbitrator shall also exclude testimony or evidence that he/she determines to be immaterial, irrelevant or unduly repetitious. The Parties may jointly or individually request a verbatim transcript. A joint request by the Parties for a transcript or the sharing of a transcript with the other Party shall require that the Parties share equally the cost of the transcript. Post-hearing briefs shall be submitted in accordance with the instructions of the Arbitrator unless he/she determines them to be unnecessary.

(g) The Arbitrator shall issue an award with a written opinion stating the reasons for the award as soon as possible after the conclusion of the arbitration (including receipt of briefs), but in no event later than twenty (20) calendar days from the close of the arbitration. Any dispute regarding the interpretation of the award shall be submitted to the Arbitrator within ten (10) calendar days from its receipt. The Arbitrator shall issue the requested clarification within ten (10) calendar days of his/her receipt of this submission.

(h) The Arbitrator may for good cause and upon written request by either party, extend any time limits contained in this Section. The failure of the UNION to pursue the grievance, after stating its intent to arbitrate, shall mean that the UNION has abandoned the action.

Section 41.05 Appeals of Arbitration Awards

Either the UNION or the EMPLOYER may appeal an Arbitrator's decision in accordance with the rules and regulations of the Federal Labor Relations Authority.

Article 42.00 Outside Employment and Activities

Section 42.01

Employees shall not engage in any outside employment or other outside activities that are prohibited by statute or 5 C.F.R. § 7201.102 (a) (b) and (c) or that conflicts with their official duties, whether on their own behalf, or for private individuals, firms, companies, institutions, or State or local governments. The term "Outside Employment" or "activity" does not include:

(a) Participation in the activities of a non-profit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless:

(1) The employee's participation involves the provision of professional services or advice;

(2) The employee will receive compensation other than reimbursement of expenses; or

(3) The organization's activities are devoted substantially to matters related to equal employment law and the employee will serve as an officer or director of the organization.

(b) Performance of duties in the Armed Forces, Reserve, or National Guard;

(c) UNION representatives representing bargaining unit employees in negotiated grievances, EEO and MSPB administrative proceedings. Before engaging in such activities, the UNION representative must request and receive approval for the use of official time pursuant to the procedures set forth in Article 9.00, Union Representation and Official Time.

Section 42.02 Request to Engage in Outside Employment

Consistent with law, rule and regulation, and EEOC Order 680.003, advance written approval is required to engage in outside employment or activity whether paid or unpaid. Employees shall forward a written request for approval to the appropriate Deputy Ethics Counselor, and when required by 5 C.F.R. § 7201.103(b), to the Legal Counsel. The written request shall include:

(a) Name and address of the outside organization or company;

(b) Type of work to be performed and proposed hours of work and approximate dates of employment;

(c) Statement whether the outside work or activity will interfere with EEOC work;

(d) Statement that the outside employment or activity involves no conflict of interest and that, if the employee becomes aware of a conflict of interest arising as a result of the outside employment, he/she will promptly report such conflict to the official(s) who approved the request; and

(e) Certification that no official duty time or government property, resources, or facilities not available to the general public will be used in connection with the outside employment.

Section 42.03

The Deputy Ethics Counselor, the Legal Counsel, or their designee, as appropriate, will approve or deny a written request of an employee to engage in outside employment or activities provided all necessary information is available to make such a determination. The response will be in writing and will state whether the request is granted or denied. The EMPLOYER will make every effort to approve or deny the request within thirty (30) calendar days from receipt; however, the EMPLOYER may take up to sixty (60) calendar days when needed.

Section 42.04

If a request has been approved, but the Employer deems it necessary to withdraw the approval, the Deputy Ethics Counselor, or the Legal Counsel, or their designee, as appropriate, will notify the

employee in writing of the withdrawal of approval and the reasons therefore. Where feasible, the notification will provide the employee with a reasonable time to discontinue such employment or activity. However, in some circumstances, the employee will be required to discontinue such employment or activity effective immediately. In any case, the employee shall have the right to provide additional information and to request reconsideration.

Article 43.00 Electronic Monitoring

Annually, the EMPLOYER shall notify employees of electronic surveillance used by the Agency. Prior to utilizing electronic monitoring systems, the UNION will be given advance notice and an opportunity to negotiate any adverse impact. This Article does not apply to security, investigations, or law enforcement activities.

Article 44.00 Special Language Skills

This Article covers those employees who use special language skills (e.g., bilingual, sign language, etc.) in the performance of their duties. Unless an employee's position description specifically states that performing translations is part of his/her job, no employee shall be required to extend their use of special language skills beyond that for which they are hired. If the employee volunteers to translate then his/her services can be utilized. The EMPLOYER will not pay a special salary rate for employees who possess and use special language skills in the performance of their duties. If an employee volunteers to translate, the supervisor may submit the employee for an award for going above and beyond their normal job duties. An employee's decision not to volunteer their skills will not negatively impact their performance evaluation or working conditions.

Article 45.00 Outsourcing

Section 45.01

Outsourcing is where the EMPLOYER remains fully responsible for the provision of affected services and maintains control over management decisions, while another entity operates the function or performs the service. This approach includes contracting out, the granting of franchises to private firms, and the use of volunteers to deliver public services.

Section 45.02

The EMPLOYER recognizes its responsibility to comply with applicable laws, regulations and rules such as the Federal Acquisition Regulations and OMB Circular No. A-76, as appropriate, concerning the outsourcing of any function or activity. The UNION recognizes the right of the EMPLOYER to outsource the performance of its functions and activities.

Section 45.03

The EMPLOYER agrees to notify the UNION of its decision to outsource any function or activity that substantively alters conditions of employment affecting bargaining unit employees. After notification, and upon request by the UNION, the EMPLOYER agrees to negotiate the impact and implementation of any such decision in accordance with Article 7.

Section 45.04

Bargaining unit employees adversely affected by a decision of the EMPLOYER to outsource any function or activity will be afforded their full rights and entitlements in accordance with applicable laws, regulations, rules and this Agreement.

Article 46.00 Alternative Dispute Resolution

The UNION and EMPLOYER acknowledge their mutual responsibility and desire to work together to make the Agency a model workplace. The UNION and the EMPLOYER agree that Alternative Dispute Resolution (ADR) is a means to facilitate early resolution of workplace conflicts. The Parties agree that the ADR process is a supplement to, but not a substitute for, either the contractual expedited or negotiated grievance procedures. If the Employer intends to make any substantive changes to the program, it will meet and confer with the UNION in accordance to Article 7.00.

Article 47.00 Transfers

Section 47.01

Employees requesting a transfer, hardship or otherwise, may submit their requests to the current Office Director/Regional Attorney and the desired Office Director/Regional Attorney. The employee shall receive an acknowledgement of his/her request within seven (7) work days from the current Office Director/Regional Attorney.

Section 47.02

Among other things, the EMPLOYER may consider whether the transfer is required by government-wide rules or regulations; the needs of the affected offices; office workloads; office staffing; the nature of any hardship and the employee's conduct and performance. Some examples of situations may include any spouse, fiancé, or domestic partner being relocated, employment or promotional opportunities in another location, or serious illness of the employee or a family member as defined in Article 27.00 Leave.

Section 47:03

Nothing in this Article and this CBA shall require the EMPLOYER to transfer an employee.

Section 47:04

If a transfer is granted, the employee shall bear the cost of the transfer. The Agency may allow up to forty (40) hours of administrative leave to the transferring employee.

Article 48.00 Surveys

From time to time, management may “survey” bargaining unit employees. For purposes of this agreement, survey means all modes of polling groups of bargaining unit employees for gathering information concerning conditions of employment. The Agency shall not use a survey to by-pass the UNION or to negotiate directly with bargaining unit employees over changes in terms and conditions of employment.

Section 48.01 Special Items

Management will not survey employees except as allowed by law. While surveys are usually voluntary and anonymous, in some instances, participation is mandatory and anonymity may not be possible. When surveys are deemed mandatory and anonymity may not be possible, the EEOC will provide an explanation.

Section 48.02 Survey Procedures

The EEOC will provide the UNION with reasonable advance notification of its intent to survey bargaining unit employees and an advance copy of the survey document. The EEOC will in good faith consider for inclusion in the survey, any comments the UNION submits. The UNION may request bargaining over any specific and identified impact of the survey.

48.03 Survey Methods

The Parties agree that on-line surveys are the quickest and most efficient means of conducting surveys and will be used, when possible.

Employees shall be allowed to use duty time to complete any surveys. The Parties agree that the amount of time that bargaining unit employees expend participating in any survey will be taken into consideration for work assignments.

48.04 Survey Results

- (a) The Agency agrees to provide the UNION with copies of all EEOC survey results compiled and distributed by the Agency or survey results that are otherwise discoverable.

- (b) The EMPLOYER agrees to provide the UNION with survey information which is conducted or mandated by outside government agencies, to the extent possible, provided that such information is available and discoverable.

APPENDIX I

MEMORANDUM OF UNDERSTANDING BETWEEN THE NATIONAL COUNCIL OF EEOC LOCALS No. 216 (THE COUNCIL) AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (THE AGENCY) CONCERNING TEMPORARY PROCEDURES FOR FILING AND ISSUANCE PURSUANT TO ARTICLE 40.09

WHEREAS, the United States Postal Service is experiencing delays in mail delivery; and,

WHEREAS, the circumstances involving the delay in mail service are beyond the control of either party; and,

WHEREAS, the parties are in need of a mechanism which allows for timely responses which do not unduly delay the processing of grievances; and,

WHEREAS, the Council and the Agency are in need of a temporary procedure for processing grievances,

THE PARTIES HEREBY agree as follows:

For the purposes of this Article, "filing" and "issuance" are defined as follows:

- (a) for the Expedited Procedure under Section 40.06, filing is determined by postmarked mail;
- (b) for the Regular Grievance Procedure under Section 40.07:
 - (1) filing at Step 1 is determined by date of receipt by the supervisor or other EMPLOYER Representative or by postmarked mail if the designated UNION Representative is not located in the same facility as the supervisor or EMPLOYER Representative;
 - (2) filing at Step 2 is determined by date of receipt by the District or Headquarters Office Director, Washington Field Office Director or Deputy General Counsel if that official is located at the same facility as the grievant or designated UNION Representative, or by postmarked mail if the appropriate EMPLOYER Representative is not located in the same facility as the grievant or the designated UNION Representative;
 - (3) filing at Step 3 shall also be determined by postmarked mail;
 - (4) date of invocation of arbitration by the UNION shall be determined by postmarked mail to the Director, Employee and Labor Relations Division.

- (c) At all steps of the Expedited and Regular Grievance Procedures, the date of issuance is determined by date of receipt by the grievant or his/her representative if the grievant is located at the same facility as the appropriate EMPLOYER Representative, and by postmarked mail, if the grievant or his/her representative is not located in the same facility as the appropriate EMPLOYER Representative.

First, second, or third step filings mailed to Headquarters or the Washington Field Office will be deemed "filed" on the day they are postmarked; however, the EMPLOYER's response period will not begin to run until that filing is received in Headquarters or the Washington Field Office. Date of receipt may be established by the UNION using certified return receipt mail or U.S. Postal Service certification of delivery.

The parties agree to review the continuing need for these procedures every sixty days beginning with the date this agreement is signed.

The parties agree that this agreement is temporary and will expire when mail delivery is routinely received within five days of postmark.

The parties agree that any changes to this agreement must be in writing, signed by both parties.

Any disputes concerning the application or interpretation of this agreement shall be resolved through the grievance or other appropriate third party process.

Signed this 9th day of 2013 .

BY THE AGENCY:

BY THE UNION:

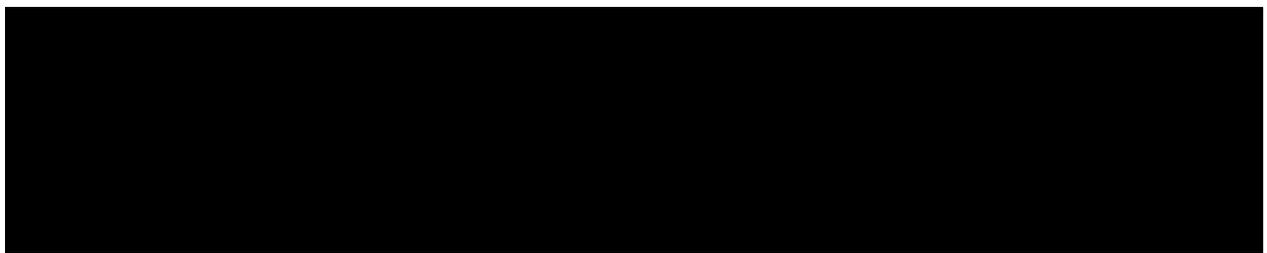


Memorandum of Understanding between the Equal Employment Opportunity Commission (EEOC) and the National Council of EEOC Locals, No. 216 (the Council), concerning the implementation date of the parties Collective Bargaining Agreement.

The EEOC and the Council previously agreed that the EEOC's Collective Bargaining Agreement would be implemented on November 4, 2013. Due to the government shutdown and employee furlough which ended on October 17, 2013, the EEOC and the Council agree that the implementation date of the Collective Bargaining Agreement, which was signed by the parties in the month of August 2013, shall be extended to Monday, November 25, 2013.

For the Equal Employment
Opportunity Commission:

For the National Council of
EEOC Locals, No. 216,
AFGE, AFL-CIO



10/21/13
Date

10/21/13
Date