



**Health Resources and Services Administration**

**and**

**American Federation of Government Employees**

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# **COLLECTIVE BARGAINING AGREEMENT**

**Effective**

**August 16, 2012**

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## ARTICLE 1

### **RECOGNITION AND COVERAGE**

The U.S. Department of Health and Human Services (HHS), Health Resources Services Administration (HRSA), Division of National Hansen's Disease Programs (DNHDP), recognizes the American Federation of Government Employees (AFGE) Local 3553 as the exclusive representative of the following categories of employees as certified by the Federal Labor Relations Authority (FLRA) in Case No. DA-RP-05-0028, March 3, 2006.

**INCLUDED:** All bargaining unit nonprofessional employees of the U.S. Department of Health and Human Services, Health Resources and Services Administration, Bureau of Primary Health Care, Division of National Hansen's Disease Programs, Baton Rouge, Louisiana.

**EXCLUDED:** Non bargaining unit employees, supervisors, management officials, commissioned officers, professional employees, intermittent employees and employees defined in 5 U.S.C. §§ 7112 (b) (2), (3), (4), (5), (6) and (7).

## **ARTICLE 2**

### **CONTRACT DURATION AND TERMINATION**

#### **SECTION 1**

- A. This Agreement shall remain in full force and effect until three (3) years from its effective date. It shall be automatically renewed from year to year thereafter unless reopened or terminated pursuant to the provisions of subsections B and C below. In addition, either Party may request to reopen up to two (2) articles of this contract during the thirty (30) day period prior to and after the 18<sup>th</sup> month anniversary of this Agreement.
- B. Either Party may give written notice to the other Party, between sixty (60) calendar days and one hundred five (105) calendar days prior to the initial expiration date and each anniversary date thereafter, of its intention to reopen and amend or modify the Agreement.

#### **SECTION 2**

The Employer surrenders no rights other than those specifically governed and enunciated by this Agreement.

#### **SECTION 3**

In the event that any provisions of the Agreement shall at any time be found, declared, or made invalid by a court of competent jurisdiction or by operation of any law, regulation, or decree, or Executive Order, the entire Agreement will not be invalidated.

**ARTICLE 3**  
**CONTRACT TERMS**

**SECTION 1**

All words used herein shall be construed according to their plain meaning as used in the context in which they are normally found and shall have no other meaning unless the parties agree to a different or additional meaning.

**SECTION 2**

This agreement is a contract entered into and between the DNHDP hereafter referred to as "The Employer," and the AFGE Local 3553, hereafter referred to as "The Union."

**SECTION 3**

*Day* means calendar day, unless otherwise specified.

*Position* means bargaining unit position.

*Employee* means bargaining unit employee.

## **ARTICLE 4**

### **EFFECT OF LAW AND REGULATION**

#### **SECTION 1**

- A. In the administration of all matters covered by this Agreement, all management officials and employees are governed by all existing and/or future laws.
- B. All government-wide regulations of the Office of Personnel Management (OPM), General Services Administration (GSA), Office of Management and Budget (OMB), Office of Government Ethics (OGE), and other government agencies with authority to promulgate such regulations, in effect as of the effective date of this Agreement, have full force and authority. To the extent they may be inconsistent with the provisions of this Agreement, the government-wide regulations will supersede and govern.
- C. Any HHS regulation, rule or policy in effect as of the date of this agreement governs the working conditions of the parties, unless it conflicts with the terms of this Agreement.

#### **SECTION 2**

- A. Should any direct conflict arise between the terms of this Agreement and any government-wide rule or regulation, or any HHS rule, regulation, or directive, issued after the effective date of this Agreement, the terms of this Agreement will supersede and govern. However, the foregoing shall not apply to any government-wide regulation implementing 5 U.S.C. §2302 (relating to prohibited personnel practices), which will govern the parties and supersede any contrary provision of this Agreement regardless of when such regulation is issued.
- B. Section A above shall not apply to any government-wide rule or regulation the Employer is obligated to implement immediately upon issuance of the regulation.

#### **SECTION 3**

- A. Past practices that are inconsistent with this agreement are extinguished upon the effective date of this agreement. Past practices not inconsistent with this agreement remain in effect until changed through the collective bargaining process.
- B. Any Memorandum of Understanding (MoU), Memoranda of Agreement (MoA), or other agreements between the Parties will expire automatically upon the effective date of this Agreement unless expressly provided to the contrary in this Agreement. All MoUs, MoAs, or any other agreements that are executed after the effective date of this Agreement will be deemed to be part of this Agreement. All subsequently-executed MoAs, MoUs or other agreements must contain a specific effective and expiration date, unless the Parties mutually agree otherwise and such agreement is reflected in

the text of the document. Otherwise, the MoA/MoU or other agreement will have no legal force or effect and will be considered void.



## **ARTICLE 5**

### **MID-TERM BARGAINING**

#### **SECTION 1**

These shall be the sole procedures to cover the negotiations that flow from Employer and Union initiated changes in conditions of employment that affect employees in the bargaining unit and that, pursuant to applicable law, create a mandatory obligation to bargain.

#### **SECTION 2**

- A. WHEN THE EMPLOYER PROPOSES TO IMPLEMENT CHANGES IN PERSONNEL POLICIES, PRACTICES AND WORKING CONDITIONS PURSUANT TO SECTION 1, IT WILL PROVIDE WRITTEN NOTICE FOURTEEN (14) CALENDAR DAYS IN ADVANCE OF THE IMPLEMENTATION OF THE PROPOSED CHANGE(S).
- B. THE NOTICE WILL BE SERVED ON THE UNION PRESIDENT OR HIS/HER DESIGNEE AND WILL CONTAIN A PROPOSED IMPLEMENTATION DATE. SERVICE MAY BE BY HAND DELIVERY, CERTIFIED MAIL, ELECTRONIC MAIL (E-MAIL), OR FACSIMILE. THE NOTICE WILL BE DEEMED EFFECTIVE UPON HAND DELIVERY, CERTIFIED MAIL RECEIPT, OR OTHER METHOD THAT CAN CONFIRM RECEIPT (E.G. E-MAIL).

#### **SECTION 3**

##### **A. Purpose**

To establish principles and ground rules in conformance with [5 U.S.C. 7101](#) et. seq., for and mid-term negotiations. The parties consider these procedures to be necessary and desirable to reduce potential areas of conflict and dispute during the conduct of negotiations. These ground rules will apply throughout the life of this agreement and to any renewal agreements following the expiration of this agreement. The parties recognize that each has a responsibility to consider the other's interests and to make an honest attempt to find acceptable solutions.

At the beginning of bargaining, the Parties may notify the appropriate Federal Mediation and Conciliation Service (FMCS) office in each instance of an ongoing matter subject to this process.

If mutually agreed, on a case-by-case basis, the Parties may choose to proceed with implementation, subject to the Union's right to reopen no later than 6 months after the implementation date. This period may be extended by mutual agreement. Nothing herein shall be deemed to waive the Union's right to file an unfair labor practice charge in the event that such implementation occurs without mutual agreement.

At all stages of the process, the Parties will communicate and bargain in a good faith effort to reach agreement in an expeditious manner.

## B. Procedures Governing Negotiations

The negotiators designated by the parties will be governed by the following rules during the conduct of negotiations:

1. **Negotiating Teams.** A designee for each party will be appointed to serve as a Chief Negotiator. If either party finds it necessary to change negotiators or alternates, the Chief Negotiator for either party shall notify the other party at least one (1) day in advance of any negotiating session. Either party may designate observers for each negotiating session. During mid-term negotiations no more than three (3) members on either side will be allowed. Bargaining team members will not be routinely rotated, but substitutions may be made as necessary to accommodate such reasons as illness, family emergency, unplanned workload contingencies, etc.
2. Every effort will be made to accomplish bargaining in the most cost-effective and practical way, including the use of teleconferencing, video-conferencing, exchange of proposals/counter-proposals electronically, etc. Between scheduled face-to-face bargaining sessions, the Parties will use alternatives to face-to-face meetings, including mediation sessions, to the maximum extent possible.
3. In accordance with [5 U.S.C. § 7131](#), official time will be granted only to employees representing the Union at the bargaining table in the negotiation of a collective bargaining agreement not to exceed the number of individuals representing the agency. The Union agrees to use this time to prepare for negotiations so that bargaining sessions can be conducted in the most productive manner possible. The Employer agrees to allow up to 8 hours of official time for preparation during mid-term negotiations for each member. Observers will not be allowed official time during any of these proceedings.
4. **Place of Negotiating Sessions** Negotiations will be held at a site arranged for by the Employer provided the Union is given equal or similar accommodations.
5. **Schedule of Negotiating Sessions.** Negotiations will be conducted on Tuesday, Wednesday and Thursday during hours, and dates mutually agreed to. Changes in the schedule may be made by mutual consent of the Union and the Employer Chief Negotiators.
6. **Conduct of Negotiating Sessions.** Each session will proceed as follows:
  - a. except for the initial session, unfinished business from preceding session;
  - b. items on the agenda as agreed upon by the parties at the preceding session; and
  - c. establishment of the agenda for the next session.
7. **Rules of Order.** The Chief Negotiator for each party may speak at his/her own discretion. The other negotiators may speak when recognized by their respective Chief Negotiator.

8. Minutes No official minutes of the proceedings of the negotiating sessions shall be made. However, each party shall be allowed to prepare unofficial minutes for its own use. Electronic recording devices will be used only if the parties mutually agree.
9. Authority. Each party shall be represented at the negotiations at all times by one duly authorized Chief Negotiator (or alternate) who is prepared and authorized to discuss and negotiate on matters subject to negotiations and to sign-off on agreements for their respective party.
10. Interim Agreement. During negotiations, the Chief Negotiator for each party will signify agreement on each section by initialing the agreed upon section. The Chief Negotiator for each party will retain his/her copies and initial the other party's copy. This will not preclude the parties from reconsidering or revising any agreed upon section by mutual consent.
11. Caucuses. It is agreed that either party requesting a caucus will be provided a suitable site by the hosting party. There is no limit on the number of caucuses that may be held, but each party will make every effort to restrict the number and length of caucuses.
12. Final Agreement. The agreement shall not be completed and finalized until all proposals have been disposed of by mutual consent. The agreement will not be effective until signed by both Chief Negotiators, ratified by bargaining unit members, and approved by the appropriate officials of the Agency, as necessary. The Union may refer any provisions disapproved by the Agency head review to the FLRA and any such provision held to be negotiable by the FLRA will be incorporated into the agreement. The parties will commence negotiations within a reasonable period after receipt of an FLRA decision.
13. Negotiability Issues. Issues as to whether a proposal is negotiable or not shall be resolved in accordance with 5 U.S.C. § 7117 (c).
14. Both parties agree to exchange proposals within fourteen (14) calendar days of the notice or intent to bargain mid-term.
15. Impasses. When either party determines that a dispute cannot be resolved, the items shall be set aside. After the Parties reach tentative agreements on and have initialed all negotiable items, they shall once more diligently attempt to resolve any existing disputed item(s).
16. These two methods would be used before reaching an impasse.
  - a. Either Party has the right to request the assistance of an FMCS mediator at the appropriate FMCS office at any time during bargaining. It is understood that a Party will not request FMCS intervention unless it has a basis to believe that bilateral efforts between the Parties will not result in an agreement in a timely

manner. The requesting Party should notify the other Party of its intent to request FMCS assistance. The request will be made within five (5) working days after the determination, extendable by mutual agreement.

- b. When mediation has been requested, the Parties will schedule a mediation session with the mediator as soon as practical. The parties prefer face-to-face mediation sessions.
- c. When the services obtained above fail to resolve the impasse, either party may request the services of the Federal Service Impasses Panel in accordance with [5 U.S.C. §7119](#).

The mediation procedure described above shall not preclude the parties from agreeing on any issues or from entering into complete agreement without the assistance of the mediator.

Notwithstanding the requirements of Section 2A, nothing herein shall be deemed to waive the Employer's authority as provided by law (e.g., changes required for the necessary functioning of the agency; overriding exigency) to implement proposed changes in conditions of employment before the completion of bargaining.

The Union and the Employer will incorporate any agreement into a Memorandum of Understanding (MoU) and each party will sign the MoU. Each MoU will contain a provision indicating an effective date and an expiration date. Any MoU will be subject to re-opening upon expiration or renewal of this collective bargaining agreement.

#### SECTION 4

The Employer will pay local travel expenses or provide government transportation.

#### SECTION 5- Union Initiated Bargaining

- A. When the Union notifies the Employer of its intention to initiate mid-term bargaining, it shall serve notice on the appropriate management official designated by the Employer.
- B. Service may be by certified return receipt mail, e-mail, or facsimile.
- C. The parties shall follow the timeframes outlined above in Section 3B.

## **ARTICLE 6**

### **EMPLOYEE RIGHTS AND RESPONSIBILITIES**

#### **SECTION 1**

Employees are required to carry out the lawful instructions of a supervisor or any other HHS management official with real or apparent authority. If there is a disagreement between the employee and the supervisor or other management official, the employee will comply with the instructions and, if desired, challenge the matter later except when compliance will result in imminent danger to employee. An employee will not be disciplined or retaliated against solely for carrying out such an instruction. The Employer is not precluded from imposing discipline on the employee if it is determined that the manner in which the instruction was carried out was inappropriate under the circumstances. Nothing in this section absolves the employee from criminal or civil liability for her/his actions.

#### **SECTION 2**

Employees are accountable to the Employer for performance of their officially-assigned duties and responsibilities. In the performance of those duties and responsibilities, employees will be governed in their conduct by government-wide standards of ethical conduct and will comply with lawfully implemented management issued directives and guidance.

#### **SECTION 3**

- A. Each employee will have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee will be protected in the exercise of such right. Except as otherwise provided under law, such right includes the right:
  - 1. to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to the Employer or otherwise appropriate authorities; and
  - 2. to engage in collective bargaining with respect to conditions of employment through representatives chosen by the employees under this Agreement.
- B. Nothing in this Agreement may require an employee to become or remain a member of the Union or to pay money to the Union except pursuant to a voluntary, written authorization by an employee for payment of dues through payroll deductions or by voluntary cash dues subject to the terms and timeframes set forth in this Agreement.

#### **SECTION 4**

- A. Nothing in this Agreement may be construed to preclude an employee from exercising grievance or appellate rights established by law, rule, or regulation,

except in the case of grievance or appeal procedures negotiated under this Agreement.

- B. A grievance filed in good faith by any employee will not cause any adverse reflection in her/his standing with her/his supervisor or her/his loyalty or desirability to the organization. The Employer will not impose any restraint, interference, coercion, discrimination, or reprisal against any employee or Union representative for:
  - 1. designating the Union for the purpose of presenting to the Employer or any government agency or official any matter of dissatisfaction, or
  - 2. presenting any relevant information concerning any matter for which remedial relief is available under this Agreement. Nothing in this section may be construed to absolve an employee from responsibility for disclosing information which is not permitted by law, rule, or regulation to be disclosed.
- C. Nothing in this agreement absolves an employee from performing assigned duties while pursuing a grievance, complaint or appeal

## SECTION 5

- A. Supervisors, employees, and the Union will treat each other and members of the public in a professional and business-like manner, with courtesy, consideration, and respect. No employee, supervisor, management official, or union representative should engage in or be subjected to harmful treatment or verbal or physical abuse on the job. This includes the expectation that no individual would be addressed with obscenities or be called derogatory names, either in person, by telephone, voicemail, e-mail, or other communications media.
- B. The Parties agree that meetings between supervisors, employees, and/or the Union should be as non-confrontational as possible. It is the responsibility of all employees and supervisors to control their behavior at all times. In a meeting with a supervisor or management official, if any participant reasonably believes that a physical confrontation is imminent, s/he may suggest a reasonable break in the meeting for “cooling off.” The Parties recognize that such a “cooling off” period may be conducive to effective employee-supervisor relationships, so the supervisor will consider whether such a break would be appropriate. If the supervisor approves a break, the meeting will be resumed as soon as practicable following the “cooling off” period.
- C. An effective means of maintaining appropriate conduct in the workplace is through the promotion of cooperation, sustained good working relationships, and the self-discipline and responsible performance expected of mature employees. All employees should:

1. actively participate in and promote programs designed to improve work methods and conditions;
2. conscientiously perform assigned duties;
3. comply with government-wide and Departmental standards of ethical conduct;
4. cooperate and strive to maintain good working relations with their supervisors and fellow employees; and
5. maintain satisfactory attendance.

## SECTION 6

A. Employees have the right to Union representation upon their request, at any examination of them by a representative of the Employer in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary or adverse action against her/him. It is the employee's responsibility to request Union representation in these circumstances.

B. The Employer will electronically distribute an annual notice to all employees advising them of their right to representation in such examinations and investigations if they so request such representation.

## SECTION 7

A. The Parties agree that:

1. It is important for supervisors and employees to understand clearly their rights and responsibilities about the use of Union representatives; and
2. In addition to meetings which the Union has a statutory right to attend and meetings for which an employee has a right to request Union representation, an employee may request a Union representative to participate in other types of Employer-initiated meetings. The Employer will seriously consider the employee's request, as a Union representative's presence may be useful in conducting a calm and objective discussion. However, a decision to permit Union presence at these meetings rests solely with the Employer.

B. When a Union representative attends a non-criminal investigation, s/he may do the following:

1. clarify the questions,
2. clarify the answers,
3. assist the employee in providing favorable or extenuating facts,

4. suggest other employees who have knowledge of relevant facts, and
5. advise the employee in the meeting.

However, the Union representative may not disrupt the meeting and may not answer for the employee.

The Employer retains the right to hold counseling sessions with employees without the presence of a Union representative. Counseling sessions may include informal discussions between employees and their supervisors regarding the employee's performance, work assignments and procedures, application of established office policies and practices, leave practices and requests, conduct, and discussions of a personal nature.

## SECTION 8

The Parties may mutually agree to record a meeting in the same fashion.

## SECTION 9

When an employee wishes to request permission to leave the worksite to contact a Union representative, s/he must inform her/his supervisor of the general nature of the visit and the estimated time of return as mutually agreed. The employee must receive prior approval of the supervisor to leave the work area and s/he must give the supervisor a telephone number at which s/he may be reached while absent in case of urgent work-related need. The employee's request to speak with a Union representative will be granted but the timing of the contact may be delayed if the employee's absence will create a workload problem. Examples of workload problems are an inability to complete a specific or previously-assigned work project timely if work is interrupted by the Union contact at the time requested, or when an employee's absence would impair office coverage. If permission is not granted for the time period requested, the supervisor will identify another time period when the employee may meet with her or his Union representative. Only under compelling circumstances will the supervisor require the delay to exceed one (1) workday.

## SECTION 10

- A. Employee participation in the Combined Federal Campaign (CFC), blood drives, and other solicitations will be voluntary, and employees will not be coerced to contribute. A supervisor may not individually solicit pledges or contributions from an employee under her/his supervision.
- B. Employees may be assigned to perform administrative functions (e.g., CFC key worker or coordinator) in these programs. The Employer will seek employee-volunteers prior to assigning employees to perform such functions.



## SECTION 11

- A. An employee who does not receive a salary payment when due will notify her/his supervisor. Upon such notification by the employee, the Employer will, as soon as possible, refer the matter to the appropriate office.
- B. To prevent over/underpayments of pay and to assure timely correction of payroll errors, employees are urged to review their bi-weekly Earnings and Leave Statements and notify their timekeeper and/or supervisor as soon as practicable of any discrepancy thereon.

## SECTION 12

- A. The Parties recognize that all employees are expected to pay all just financial obligations promptly.
- B. Nothing in this section may be construed to:
  - 1. prevent the Employer from verifying that an individual is an employee, or providing her/his grade and/or the gross amount of her/his pay, or both;
  - 2. inhibit the Employer from enforcing rules, regulations, or policies governing use of Government-issued travel or purchase charge cards, phone cards or equipment; and/or
  - 3. preclude the Employer from complying with an order of a court of competent jurisdiction instructing the Employer to comply with legal process brought for the enforcement of an employee's legal obligations to provide child support and/or alimony payments and other garnishments, in compliance with government-wide laws, including 5 U.S.C. 5520a, 42 U.S.C. 659, and such rules, regulations, and executive orders as may from time to time be promulgated there under.

## SECTION 13

In addition to salary direct deposit and allotments for Union dues, charity, and savings bonds, each employee may elect to have up to the maximum number of discretionary allotments (savings-type and/or for purposes other than savings) permitted by the capacity of the payroll system in use by the Employer at the time any allotment request is made. Should the Employer thereafter change payroll systems, if the new system's capacity differs as to number of allotments, the employee may elect additional allotments or must reduce her/his number of existing allotments to be consistent with the capacity of the new payroll system.

## SECTION 14

The Employer will generally not require an employee to submit to a polygraph examination.

On rare occasions, such a test may be requested by law enforcement/special agents of the Department or the Federal Government. Employees who refuse to submit to a polygraph examination will not be disciplined based on that declination.

## SECTION 15

Employees may decorate their offices and individual work areas, but decorations may not interfere with or violate the following:

1. the Employer's method of conducting business;
2. the rights of other employees and the public, including smells and sounds;
3. federal property, health and safety requirements and facility maintenance needs for government owned and leased space;
4. nothing can be posted in public spaces unless sanctioned by facility management;
5. commonly accepted standards of good taste; and
6. employees are expected to maintain an orderly office environment.

## SECTION 16

Employees will be provided two (2) hours of duty time during the first week after this Agreement becomes final to read its provisions. This time must be used to read the Agreement at the worksite. The specific time will be set with the approval of the supervisor. Upon the mutual agreement of the Union and Employer, the Union can substitute these two (2) hours with one two (2) hour contract training session for all bargaining unit employees within the first thirty (30) days of implementation.

## SECTION 17

- A. Service of process (subpoenas, summons/complaints, etc.) on employees in their personal capacity, where the suit does not relate to the employee's official duties, will tentatively not be effectuated on federal property during duty hours.
- B. Service of process (subpoenas, summons/complaints, etc.) on employees in their official capacity, or in their personal capacity if the suit relates to their official duties, should be effectuated consistent with the Department's regulations found at 45 C.F.R. Part 4.

## SECTION 18

- A. The Employer has a legitimate work-related basis for monitoring employees' use of Government property and equipment, and employees have no right to privacy when using such property and equipment.
- B. This section applies to such things as:
  - 1. employees' calls, messages, and other communications, whether by telephone, facsimile, e-mail, or any other media and;
  - 2. employees' desks, computers, files, furniture, and work spaces.
- C. The Employer has the right to look in and through an employee's work area for official business purposes, such as looking for needed files or assignments when an employee is not in the office.

## SECTION 19

The Employer will make appropriate arrangements for employees to testify in their official capacity at a hearing before a third party adjudicator. Employees called to testify by the Union, who are approved by such an adjudicator as relevant and material witnesses for the proceeding, will be made available by telephone- or video-conference (as available under the circumstances) for delivering their testimony, if they are not located near the site where the proceeding will be held.

## SECTION 20

Upon request by the Employer, an employee must provide her/his home telephone, pager, and/or cell phone number. This information will be safeguarded by the Employer and used for official business purposes only.

## SECTION 21

The Federal statutes listing merit systems principles and prohibited personnel practices are available from various sources on the Internet, where they are frequently updated in text. The citations for these statutes are 5 U.S.C. § 2301(b) and 5 U.S.C. § 2302(b), respectively.

## SECTION 22

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

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

## SECTION 23

Conserving energy is of great importance to the Employer. All employees have an affirmative responsibility to conserve energy in their respective work environment.

## **ARTICLE 7**

### **UNION RIGHTS**

#### **SECTION 1**

- A. It is agreed that the Union will be given the opportunity to be represented at all formal discussions between the Employer and an employee (s) concerning any grievance or any personnel policy or practices or matters affecting general working conditions of employment. In this regard, the Employer agrees to notify the Union as far in advance as practicable of the meeting. Notice for meetings for which no urgency exists will normally be given at least two (2) work days in advance.
- B. The notice will be sent to the Union President or his/her designee and will include an agenda of issues to be discussed, if available. The Employer may give notice orally, in writing, by email, or facsimile.
- C. The Employer will acknowledge the attendance of the designated Union representative at the start of formal meetings. At the conclusion of the meeting, the Union representative will be given the opportunity to ask questions on behalf of the employee(s) and may make a brief statement as to the Union's position on the matter under discussion.

#### **SECTION 2**

All Union requests for data made under 5 U.S.C. § 7114(b)(4) will be identified as such and must be signed by the authorized Union official and submitted to the appropriate Labor Relations representative. Data requests will be processed in accordance with all applicable laws and regulations.

## **ARTICLE 8**

### **UNION REPRESENTATIVES/OFFICIAL TIME**

This Article governs the use of official time for bargaining unit representational functions performed by employees. The parties recognize that the use of official time by Union representatives involves a balancing of the Union's right to sufficient time to allow it to provide quality representation to all the employees it represents and the Employer's right to assign work so as to efficiently and effectively accomplish its mission.

#### **SECTION 1**

All elected Union officers are eligible to receive official time for the performance of the functions listed in Section 4. C. below. Additionally, the Union may appoint one steward for every 50 bargaining unit employees (BUEs) (or major fraction thereof) that will be eligible to receive official time.

#### **SECTION 2**

- A. The Union agrees to provide the Servicing Human Resources Center (SHRC) Labor Relations Officer (LRO) with a written listing of its Union representative(s) along with a description of their individual Union assignments no later than two (2) weeks after the effective date of this Agreement. Changes will be submitted to the SHRC LRO not less than two (2) workdays prior to the assumption of representational responsibilities by any new representative(s). The Employer will not approve such official time until the written notices are received by the SHRC LRO.
- B. Except where explicitly provided, this Agreement shall not be interpreted in any manner which interferes with the Union's right to designate representatives of its own choosing on any particular representational matter.

#### **SECTION 3**

- A. A union representative will not be disadvantaged in the assessment of his/her performance based on his/her use of approved, documented official time when conducting labor-management representational duties authorized by this Article. However, it is understood that performance problems unrelated to the use of official time may be addressed in accordance with other relevant provisions of this Agreement. The performance of employees serving as union representatives will be rated on the basis of Employer-assigned work consistent with the elements identified in the respective employee's performance plan. Time spent on union duties will not be considered by the supervisor during productivity considerations. That is, the employee union representative's performance of Employer-assigned work will be rated on the basis of pro-rated work time, i.e., the work performed in available work time after approved official time has been subtracted. The Employer will not evaluate the Union representative's performance of Union representational duties and the performance of such duties shall not be relevant to any performance appraisal.

- B. When the Union representative is initially appointed, the supervisor and the Union representative will meet to discuss workload and performance expectations.

#### SECTION 4

- A. Pursuant to the statutory right and responsibility of the Union to represent bargaining unit employees, representatives of the Union who are employees of the Employer will be granted reasonable amounts of official time to investigate, prepare for and conduct representational functions in accordance with the provisions of this Article. Official time is authorized to represent DNHDP bargaining unit employees. For the purpose of this article, a reasonable amount of time means an amount that is consistent with the amount a reasonably competent, prudent and diligent representative would require for the performance of the representational activity in question. Additionally, the parties have agreed as follows with regard to the meaning of reasonable time:
- B. The reasonableness of amounts of time requested will be assessed based on all of the facts and circumstances. However, notwithstanding other considerations, time requested by these representatives shall not constitute a reasonable amount of time if it exceeds 8 hours of their available duty time in any given pay period. Management may waive the 8 hour limitation for such activities as term and mid-term negotiations. However, the overall annual usage may not exceed 208 hours per representative. This total does not include attendance at labor-management relations training and participation on labor-management committees.
- C. For the purpose of this Article, “representational functions” means those authorized activities undertaken by Union representatives who are employees of the Employer on behalf of other bargaining unit employees or the Union pursuant to representational rights under the terms of this Agreement. Internal union business may not be conducted on official time. Activities for which official time will be authorized under the terms of this Article include:
1. All negotiations with the Employer occurring during the term of the CBA;
  2. Any statutory appeal proceeding or other forum in which the Union is representing an employee or the Union is acting pursuant to its obligations under relevant contract provisions, regulations, or law;
  3. Grievance meetings and arbitration hearings;
  4. EEO complaint settlements, administrative and/or third party hearings if a complaint is processed under the negotiated grievance procedure; and disciplinary or adverse action oral reply meetings, or if the Union is representing the employee;
  5. Any meeting for the purpose of presenting reconsideration replies in connection with the denial of within-grade increases;
  6. Discussions of possible grievances with an employee;

7. Conferring with affected employees about matters for which remedial relief is available under the terms of this Agreement
8. Formal discussions between Employer representatives and employees concerning personnel policies, practices, and matters affecting working conditions;
9. Attendance at an examination of an employee who reasonably believes he or she may be the subject of a disciplinary or adverse action and the employee has requested representation pursuant to 5 USC 7114(a)(2)(B);
10. Informal consultations between the Employer and the Union;
11. Preparation of reports, forms, and documents required by law or regulation concerning the proper operation and administration of a labor organization;
12. To meet with members of Congress and their staffs on matters relating to bargaining unit conditions of employment.
13. Attendance at meetings of committees on which Union representatives are authorized membership by the Employer or an Agreement;
14. Attendance at Employer-recognized activities to which the Union has been invited;
15. To conduct training on labor relations issues for employees not to exceed two (2) hours quarterly (non-cumulative);
16. The Employer will allow a maximum of 240 hours for the purposes of attending training relative to Labor-Management Relations. The Employer must be notified and provided with an agenda and a course description two (2) weeks in advance. The time authorized for this purpose shall not exceed 40 hours per representative per year.
17. To participate in jointly sponsored training primarily to further the interest of the government by improving labor-management relationships; and
18. To prepare for, if necessary, and travel to any of the activities listed above.

## SECTION 5

- A. Official time for Union representation must be requested in advance, except in unusual circumstances (e.g., imminent danger to an employee, impending immediate removal of an employee from the workplace, management-initiated meetings for which the Union was not given prior notice, etc.). All dates included in a single request for use of official time must fall within the same pay period.
- B. The Union representative will request authorization to use official time from his or her supervisor on an official time request form (see Appendix 1), submitted at least forty-eight (48) hours in advance of the proposed official time use (unless exigent circumstances preclude this much advance notice) . The Union representative will indicate in the



appropriate section of the official time request form the approximate time period(s) s/he believes is/are required and the type of representational activity s/he wishes to carry out, using the appropriate number from the list of representational activities in Section 4 C of this Article. All advance requests for official time are understood to be good faith estimates. All Union representatives are subject to all leave administration and time keeping procedures affecting employees generally (The Employer retains the right to replace the paper form used to record official time with an automated system/electronic form when one is developed).

- C. As necessary, supervisors may ask for information in addition to that contained on the official time request form (Appendix 1) for the purpose of making initial judgments as to whether amounts of time requested are reasonable. However, supervisors may not require representatives to provide information that would violate their representational responsibilities (e.g., the identity of potential grievant(s)).
- D. Where work exigencies require a Union representative's attention during or immediately following the time-period specified in the official time request form, supervisors may condition their approval of any official time request upon the Union representative returning to the office at a date and time certain to resume his/her performance of regular duties. Any such condition will be stated with specificity on the official time request form at the time it is approved.
- E. The parties recognize that a Union representative on approved official time may, from time to time, find that his/her estimate of the time needed is insufficient. In such circumstances, if no condition was specified in the approving section of the official time request form, the Union representative will contact his/her supervisor or designee prior to exceeding the estimate, and notify him/her of the circumstances that require an extended period of time. Normally, such extensions, if reasonable, will be granted unless doing so would substantially hinder accomplishment of essential workload requirements as specified in subsection F of this section.
- F. The Employer will balance official time needs with workload needs pursuant to this Article. Requests for reasonable amounts of official time will be granted when requested unless granting the requested time would hinder the accomplishment of workload and/or assigned duties.
- G. The Union representative will record the actual time used on Appendix 1. The entries will accurately depict actual official time used and will be completed and submitted to his/her supervisor upon return to duty. The supervisor is responsible for maintaining the original form and providing a copy to the SHRC, LRO at the end of each month.
- H. All employees (e.g., grievant, representatives, witnesses, and appellants) whose presence is necessary at relevant proceedings such as hearings, meetings, arbitrations, oral replies, etc. will be authorized official and/or duty time to participate in the proceedings.

## SECTION 6

The Union will make every reasonable effort to accomplish representational activities in the most cost effective and practical ways, including use of teleconferencing, etc. Both Parties will strive to meet mutual needs in scheduling and conducting these activities.

## SECTION 7

- A. Union representatives working on credit hour programs may earn credit hours for representational activities in the following circumstances:
1. They must have the approval of their supervisors, consistent with the credit hour provisions in Article 21 , Hours of Work and Alternative Work Schedules; and
  2. The time earning credit hours must be:
    - to participate as a Union representative in Employer initiated meetings for which official time is otherwise appropriate and that occur outside of core hours; and/or
    - the Union representative is working approved credit time, i.e., duty status.
  3. The Union representative must record these credit hours in accordance with Article 21 and as official time on Appendix 1.
- B. Employee representatives are not authorized to use official time while working at an alternate duty station under a flexiplace agreement.

## SECTION 8

- A. The Employer will reimburse Union representatives who are employees of the Employer for all reasonable and necessary travel expenses incurred in performing representational activities pursuant to this Article.
- B. The Employer shall not be required to reimburse Union representatives for any travel expenses in connection with Union-sponsored events, such as conventions or for travel expenses in connection with meeting with members of Congress.

## **ARTICLE 9**

### **DUES WITHHOLDING**

#### **SECTION 1**

This Article is for the purpose of authorizing eligible employees who are members of the Union to pay dues through voluntary allotments from their compensation. To be eligible to make such voluntary allotment, an employee must:

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

#### **SECTION 2**

The Union and Employer agree that the provisions of this Article are subject to and will be governed by applicable Federal laws, rules, and regulations.

#### **SECTION 3**

The Union agrees to do the following:

- A. Inform and educate members of voluntary nature of the system for the allotment of labor organization dues, including the conditions under which the allotment may be revoked;
- B. Assist as necessary in making SF-1187 forms available to all employees who need them, all forms are found at <http://www.opm.gov/forms/html/sf.asp>;
- C. Complete Section A of SF-1187 and keep the official designated by the Employer informed of any changes in this information. The Union will assure that the employee's Social Security number, job title, and work location are properly annotated in the appropriate blocks on the SF-1187. The Union will promptly submit the completed SF-1187 to the Employer's designated official (EDO) after the signing by both the authorized official and the employee;
- D. Inform the EDO of the name of any particular employee who has been expelled or ceases to be a member in good standing in the Union;
- E. Inform the EDO of any changes in the dues amounts or the formula for membership dues. Changes in the dues amounts will begin the first full pay period designated by the Union's National Office. Changes in the dues amount will be made as soon as possible, but no later than sixty (60) days after notification. AFGE will make no more than one (1) such change in a

twelve (12) month period; and

- F. Promptly advise the EDO of the names and complete mailing addresses and changes thereto of officials who are responsible for certifying SF-1187s and to whom remittances, printouts, and other dues withholding data should be submitted.

#### SECTION 4

The Employer agrees to do the following:

- A. Deduct and process voluntary allotments of dues and changes in dues upon certification from the AFGE Local 3553 President in accordance with this Agreement;
- B. Withhold authorized dues on a bi-weekly basis at no cost to the Union or the employee;
- C. Prepare the Department of Health and Human Services Form 610 for transmission within one pay period of receipt of a properly certified SF-1187;
- D. Notify the Union when an employee, who has submitted a SF-1187, is not eligible or no longer eligible for an allotment, along with the reasons for the decision, including promotion actions;
- E. Prepare biweekly remittances and reports as follows:
  - 1. Transmit to the Union the total amount deducted for all employees and total amount remitted to the Union;
  - 2. Remittance will be made directly to the American Federation of Government Employees, Local 3553, Finance Department, 80 F Street, NW, Washington, DC 20001, along with a printout showing the following:
    - a. Pay roll period number, pay period ending date, dues account number, and date the report was prepared;
    - b. Identification of duty station;
    - c. Identification of the labor organization, including the Union Local number;
    - d. Name and address of Remittance Official and Employer's designated official;
    - e. Names of employees for whom payroll deductions are made in alphabetical order by last name and the amount of the deduction;
    - f. Number of records, number of deductions, total amount deducted, total fees, and net due to Union;
    - g. Social security numbers of employees for whom payroll deductions are made;
    - h. Whether an employee retired or was separated;
    - i. Whether an employee is continuing to be carried in a non-duty status;
    - j. Whether an employee is full-time, part-time, seasonal, intermittent, term, temporary, or permanent;
    - k. The bi-weekly base pay of the employee, his or her grade and step, pay plan (General Schedule or Wage Grade);

- l. National and local portion of dues withheld;
  - m. New allotments;
  - n. Revocation of an employee's dues withholding;
  - o. No deduction because the employee's compensation was insufficient to permit a deduction; and
  - p. Automatic pay adjustments.
3. The Employer will send to the Union an electronic copy of the Employer's dues withholding data via electronic file transfer. The Employer will provide such data in ASCII delimited (preferably comma or tab delimited).
- F. Assign the appropriate Union dues withholding account number for the current level of dues;
- G. Withhold new amounts of dues upon certification from the AFGE National President so long as the amount has not been changed during the last twelve (12) months; and
- H. Inform local chapter of the individuals responsible for receiving and processing 1187s and their contact information (address, email, phone number) for the office of the Operating Division represented by the Local on a semi-annual basis and whenever there is a change in responsible HHS staff.

## SECTION 5

It is agreed that allotments will be terminated:

- When an employee ceases to be a member in good standing of the Union
- If the Union loses exclusive recognition for the covered unit
- If the employee is reassigned or promoted from the unit for which the Union has been accorded exclusive recognition
- When an employee timely revokes her/his allotment pursuant to the provisions of this Article,
- When the employee is separated or separates from the Federal Service.

## SECTION 6

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

- A. Starting dues withholding: No later than one full pay period following receipt of the SF-1187 by the EDO.
- B. Change in amounts of dues: Beginning the first full pay period designated by the Union's National Office. This dues change will be made as soon as possible, but not later than sixty (60) days after notification. Such changes in dues amounts will be limited to one (1) change each twelve (12) months.
- C. Termination due to loss of membership in good standing: Beginning of first full pay

period after the date of notification into the Employer's automated personnel and pay system.

- D. Termination due to loss of recognition: Beginning of the first full pay period following the loss of exclusive recognition upon which the allotment was based.
- E. Termination due to separation or movement out of the exclusive unit: Beginning of first full pay period after the date of receipt of notification into the Employer's automated personnel and pay system.
- F. Termination due to revocation by the employee: Revocation notices for employees who have had dues allotments in effect for more than one (1) year must be submitted to the EDO during pay period 15. Revocations will become effective during pay period 19. Revocation notices for employees who have not had dues withholding in effect for at least one (1) year must submit the revocation notice to the EDO on or before the one-year anniversary date of their dues allotment. These revocations will become effective on the first full pay period following the 1-year anniversary date if the revocation is received by the EDO prior to the anniversary date.

In all cases of revocation, revocations will only be effected by submission of a completed SF-1188 that has been initialed by the Local President or the Local President's designee(s). If the SF-1188 is not initialed, the Employer will return the SF-1188 to the employee and direct the employee to contact the proper Union official for initialing. All SF- 1188s must be signed by the Local President (or his/her designee) in a timely manner.

## SECTION 7

The Union will promptly remit any erroneous payments it receives for which it has not provided an employee reasonable services, e.g., the payment due another union.

## SECTION 8

Each January, May, and September, the Employer will provide the Union a data file that will contain the following data on all employees in the bargaining unit:

1. Name
2. Grade and Step
3. Position Title
4. OPDIV
5. Branch
6. Group or Division
7. Unit
8. Post of Duty City
9. Post of Duty State
10. Employees Work Status (such as permanent, intermittent, seasonal, etc.)
11. Years of Service
12. Service Computation Date

### 13. CSRS or FERS

## **ARTICLE 10**

### **UNION ACCESS TO EMPLOYER FACILITIES AND SERVICES**

#### **SECTION 1**

The Employer will permit reasonable use of copying equipment to reproduce material related to the DNHDP's labor-management relations program. The Employer reserves the right to ensure that all materials being produced relate to its bargaining relationship with the Union.

#### **SECTION 2**

The Union may use the Employer's internal mailing systems, including e-mail, to transmit or receive representational correspondence concerning the Employer's labor relations program. The Union is not authorized to use these mail systems for internal Union business (including but not limited to the solicitation of membership, election of union officials, and collection of dues) as set forth in 5 U.S.C. §7131(b). The Employer accepts no responsibility for lost, damaged, opened or misrouted mail. In no case will the costs be more than nominal.

#### **SECTION 3**

The Employer agrees to provide the Union access to all current as well as new written issuances and updates and amendments on HHS, HRSA, and DNHDP personnel policies and practices. Upon request, the Employer will furnish the Union one (1) copy of the above, which may be in electronic form. This includes referral to a website.

#### **SECTION 4**

- A. The Employer will post this agreement on the Office of Human Resources' (OHR) website and inform employees of how to access the agreement. Employees will be permitted to use Employer equipment to print copies of the agreement if they choose to do so. The Employer will provide fifty (50) copies to AFGE Local 3553.
- B. The Employer will inform new employees (including employees who are transferred, reassigned into the bargaining unit, etc.) at new employee orientations how to access this agreement on the Employer's website and inform them that they are authorized to print a copy if they so choose.
- C. The Employer will be responsible for providing copies of this Agreement in alternative formats, e.g., Braille, etc. if requested by a disabled employee.

#### **SECTION 5**

- A. All Union communications will clearly identify the Union as the source of the communication.
- B. The Union's usage of Employer services not addressed in this Article is limited to those



matters for which official time is authorized in accordance with Article 9, Union Representatives/Official Time, of this Agreement.

## SECTION 6

- A. The Employer will provide the Union with office space to be used during the normal duty hours of employee representatives (and employee(s) as appropriate). The office will be suitable for housing union files and holding private meetings with employees and will be furnished with a desk and chair, computer, printer, telephone, and a lockable file cabinet. The Union will be given access to copy equipment and fax machines in their local working areas. The Union will be responsible for payment of telephone service/usage expenses.

Should the Employer need to reclaim this space for patient care, except in exigent circumstances, it will normally give the Union five (5) days advance notice. If such space is reclaimed, the Employer will arrange an alternate or substitute space if available.

- B. Based on availability, the Employer will give the Union access to private space/conference rooms on an “as needed” basis. The Union will adhere to the conference room reservation process in place where the conference space is located. Conference rooms or any other Employer space may not be used for any non-representational activities (e.g., internal union business activities).

## SECTION 7

Union transmissions (including electronic mail) are subject to the same standards that apply to all users, as established by applicable laws, regulations, and HHS, HRSA, and DNHDP policies.

## SECTION 8

- A. The Employer will provide the Union with one bulletin board for use in displaying union information.
- B. The Union agrees to maintain its bulletin board in a timely, neat, and orderly condition. The posting of material on the bulletin board will be accomplished at the Union’s expense, and the Union will ensure that no posting will violate the law or security of the Employer, or contain scurrilous or libelous material. All postings will clearly identify the Union as the source of the material.
- C. The Employer will permit the Union to distribute Union literature in work areas during the non-duty time of the employees distributing the literature, where such distribution does not cause a disruption of the work flow of the Employer. Employees are advised not to read the material during work time.
- D. The Union agrees to furnish to the DNHDP Director or his/her designee a copy of any material to be posted on bulletin boards or to be distributed to employees at least three workdays in advance to review for compliance with applicable laws, regulations and this

agreement.

## SECTION 9

- A. The Union may use broadcast e-mail (i.e., e-mails to broad groups of employees as distinguished from e-mails to one or a few addresses about specific representational matters) to communicate with DNHDP bargaining unit employees concerning general representational matters related to the labor relations program of the Employer. Broadcast e-mail transmissions are subject to the same standards that apply to all users, as established by applicable laws, regulations, and policies of the HHS, HRSA and DNHDP. Additionally, union broadcast e-mails are subject to the same content requirements and must meet the same standards as material posted on bulletin boards (i.e., they must not violate the law or security of the Employer, or contain scurrilous or libelous material). All broadcast emails will identify the Union as the source of the message.
- B. The Union agrees to furnish the DNHDP Director or designee with a copy of broadcast e-mail messages (and any attachments) for compliance review in accordance with Section 8 D of this Article, at least three (3) work days before they are sent to employees.
- C. Broadcast e-mails will not be used to transmit voluminous messages or lengthy attachments (e.g., more than five (5) standard pages).

## **ARTICLE 11**

### **NOTICES TO EMPLOYEES**

#### **SECTION 1**

When the Employer presents an employee with any of the written notices listed below, that notice may state at the top in capital letters: "AT YOUR OWN OPTION, YOU MAY FURNISH THIS NOTICE TO THE UNION":

- A. letters proposing disciplinary or adverse action;
- B. final decision letters on any disciplinary or adverse action;
- C. letters of advance notice and of final decision to withhold a within-grade increase;
- D. letters of advance notice and of final decision to impose a reduction-in-force;
- E. letters of advance notice and of final decision to downgrade an employee's position classification;
- F. notices of involuntary reassignment;
- G. notices of proposal and final decision to remove or demote an employee for unacceptable performance;
- H. letters denying waiver of an overpayment; and
- I. letters denying outside employment activity requests.

#### **SECTION 2**

When applicable, the decision notices referenced above will advise employees of their grievance and/or appeal rights established by law, rule, regulation, and/or this Agreement.

## **ARTICLE 12**

### **NEW EMPLOYEE ORIENTATION**

#### **SECTION 1**

The Employer agrees to provide orientation to new employees. At a minimum, the program will include a brief overview of the local office, basic information on employee responsibilities and benefits, distribution and discussion of the ethical rules and standards of conduct applicable to employees, distribution of information on the Union's exclusive representational right and the right of employees to join or not to join the Union, and the name and location (including telephone number) of the Union representative having responsibility for representation in the new employee's area.

#### **SECTION 2**

The Employer will include, in the Entrance on Duty (EOD) package given to each employee at orientation, instructions on where to find the electronic version of this Agreement. All new employees to the bargaining unit will be provided two (2) hours of duty time to read this Agreement; this must be used to read it at the worksite. The specific time will be set subject to the approval of the supervisor.

#### **SECTION 3**

Simultaneous with presenting an employee with an EOD package, the Employer will make available to the employee a package of material provided by the Union. The package may contain:

- A. an introductory letter from the Union;
- B. the AFGE Insurance Plan Brochures, if any;
- C. an SF-1187, Dues Withholding Form;
- D. a list of local representatives; and
- E. any informational brochures clearly identified as being prepared by the Union.

The Union agrees that the above material will not violate the law or the security of the Employer, nor will it contain libelous material.

#### **SECTION 4**

Whenever a group orientation is conducted by the Employer for new employees, the Union will be notified and authorized to be present on official time. The Union will be afforded the opportunity to make a presentation to the employees during their orientation for up to fifteen (15) minutes.

## **ARTICLE 13**

### **PERSONNEL RECORDS**

#### **SECTION 1 System of Records**

- A. Each employee, and/or a representative designated by a written authorization, will upon written request be granted access to any record(s) in a system of records pertaining to that employee with the exception of records to which access is restricted by law or government-wide regulation. Such access will take place electronically whenever possible. If access must be granted to a hard copy file, the employee's/representative's review of the file must occur in the presence of the individual(s) having official custody of the record or her/his designee(s). If the employee is located in a different geographic area than where the record is officially maintained, the record will be sent to a temporary custodian, who will be present when the employee reviews it.
- B. Access to hard copy records, when necessary, will normally be granted within ten (10) work days of the employee's request. If the records are not co-located with the employee, the Employer will utilize an expedient and secure means of transfer. If the Employer is unable to provide access to the records within ten (10) work days due to unforeseen circumstances, an explanation of the delay and a projected time for providing access will be given to the employee and/or the designated representative.
- C. Employees should read and retain copies of personnel documents routinely furnished to them. In the event that an employee fails to retain her/his copy and the document is not accessible electronically, one additional copy of any such document will be furnished free of charge to the employee or her/his representative designated by a written notarized authorization, upon request.
- D. Managers or other representatives of the Employer may not maintain systems of records containing personal information about employees without meeting the requirements of the Privacy Act.

#### **SECTION 2 Medical Records**

Records, such as medical records, which are not normally available for inspection and review by the employee or her/his representative (designated in writing), will be made available to authorized persons only for official use as provided for in the Privacy Act of 1974, as amended. Records will not be made available to any unauthorized person(s).

#### **SECTION 3 Other Records**

The Parties agree that Official Personnel File and other personnel records will be maintained in accordance with applicable statutes and regulations, including the Privacy Act of 1974, as amended. The Employer will purge documents from such systems of records pursuant to

applicable laws and this Agreement.

#### SECTION 4 Supervisor's Conduct Notes

- A. Personal notes maintained by an employee's supervisor, which are exempt from the disclosure requirements of the Privacy Act, will not be given to a succeeding supervisor.
- B. If supervisors make a personal decisions to keep notes on employees, the notes or files must be: (1) absolutely uncirculated—the notes cannot be reviewed by anyone else (this includes secretaries, or other supervisors, or management officials) and (2) maintained in a secure fashion in order to prevent disclosure.
- C. Supervisory notes may only be used to support an action detrimental to an employee if such note(s) have been shown to the employee and a copy provided to the employee, if requested. Once an employee has received a copy of the supervisory note(s), the note(s) can be provided to the appropriate management official with a legitimate need to know for the performance of their duties. Where employee has made no request for such notes, this latter requirement is inapplicable
- D. The time frames for retaining supervisory notes will be up to one (1) year. If personnel action is taken within one (1) year, supervisory notes may be retained as long as required as related to the personnel action.

## **ARTICLE 14**

### **ANNUAL LEAVE**

#### **SECTION 1**

Employees will earn annual leave in accordance with applicable statutes and regulations.

#### **SECTION 2**

- A. Annual leave will be charged in increments of one-quarter hour.
- B. The use of annual leave is a right of the employee subject to the approval of the Employer. Leave-approving officials (LAO) may, consistent with operational demands and with consideration of optimal staffing levels, determine when annual leave may be taken, refuse to grant annual leave, or revoke annual leave that has been granted, which may require recalling an employee to duty.
- C. Requested leave must not be considered officially approved until authorized by the LAO.
- D. Leave will not be denied for arbitrary or capricious reasons.
- E. It is the responsibility of the employee to request annual leave in advance. However, when an employee is unable to make the request in advance due to unforeseen circumstances, the use of leave may be approved.
- F. Employees must report to work or have leave approved, every day, no later than the beginning of his/her fixed tour of duty, or for an employee working a flexible tour of duty, no later than her/his tour of duty or the start of core hours (9:00), whichever is earlier. On rare occasions, the supervisor may waive this requirement and approve annual leave after-the-fact for unexpected delays of an urgent nature (e.g., transit problem on the way to work) which caused a later arrival.
- G. When an employee has not received advance approval for leave but is not able to report to work for personal reasons, the employee must, by no later than his/her normal starting time or the start of core hours, whichever is earlier, speak directly to her/his LAO (or his/her superior) or leave a voicemail and/or e-mail message for that official, requesting leave and giving the reason for not having secured advance approval. The LAO will approve or deny the leave requested. If the employee does not, prior to the beginning of core hours, speak directly to the leave-approving official or provide the required message, the hours of absence may be charged as absence without leave (AWOL). Where the supervisor or manager determines that individual circumstances so warrant, the leave-approving official may require employees seeking unscheduled leave to speak to the LAO directly or provide a telephone number where

they may be reached during the unscheduled absence. This is necessary in case the LAO needs to contact the employee about the leave request or an immediate or pressing operational work requirement.

### SECTION 3

- A. Employees are encouraged to submit requests for annual leave as far in advance as possible. Leave requests that are submitted several months ahead of time may not be acted upon until such time as the LAO can properly assess the workload needs for the requested period. The Employer may, during periods of high leave use or operational needs, require that extended leave requests (i.e., those for periods in excess of five (5) consecutive workdays) and/or requests for days off immediately preceding or following a holiday be submitted by a specific date (e.g., September 1 for end-of-year holiday and use-or-lose period). Such leave requests should be submitted to the appropriate leave-approving official. S/he will respond to such requests as soon as practicable.
- B. When an employee's request for extended annual leave conflicts with the request(s) of other employee(s) for the same date(s), the employees affected, if equally-qualified and capable of performing the needed work during that period, will first try to resolve the conflict in requests informally. If resolution is not possible, the determination will be made by the supervisor, considering such factors as the dates on which the conflicting requests were submitted, seniority (based upon service computation date), prior leave approved for that period if close to a holiday, operational demands, etc.

### SECTION 4

- A. An employee will be permitted to change approved scheduled leave to another time. Such changes will be considered and approved in accordance with Section 2 above.
- B. Employees will be provided an opportunity, where consistent with operational demands and with consideration of optimal staffing levels, to use any annual leave earned that will be in excess of the maximum allowable carry-over (so-called "use-or-lose") at some time during the course of the leave year so as to avoid losing annual leave. Each employee will monitor her/his annual leave account in order to make appropriate advance requests to the Employer for leave for vacation and other purposes which will contribute toward avoiding loss of annual leave.

### SECTION 5

- A. The Employer agrees to authorize leave to any Union representative for attendance at Union meetings, or portions of meetings, which constitute internal Union business, unless there is a conflict with work-related duties. The Local President will notify the Employer as to which representatives will be attending such meetings as early as possible, normally at least ten (10) workdays preceding scheduled departure.



- B. Additionally, the Employer will grant the Union representatives leave to perform other internal Union business, unless there is a conflict with work-related duties.
- C. For purposes of this section, employees may use annual leave, leave without pay, earned credit hours, earned compensatory time, or any combination thereof.

## SECTION 6

Employees, upon request, may change previously-authorized annual leave to sick leave, where sick leave is appropriate.

## SECTION 7

Annual leave, once approved, will not be rescinded by the Employer unless its use would be inconsistent with operational demands.

## SECTION 8 LEAVE RESTRICTION

- A. If the Employer suspects abuse of annual or related leave based upon a pattern of usage, including persistent tardiness, the employee may initially be counseled, in the supervisor's discretion, depending on the circumstances. The reason(s) given by the employee for the questioned usage during any counseling will be considered before any determination is made that abuse has occurred. Abuse must be based upon actual evidence of misuse of leave.
- B. If there is evidence that an employee's leave pattern may indicate that an abuse of annual or related leave exists, the employee will be advised in writing that an acceptable explanation will be required for each subsequent absence for which annual or related leave is requested. In the Employer's discretion, documentation to support the explanation may be required. A leave restriction letter will apply to all other types of leave (including credit hours) used in lieu of annual leave. The leave usage of every employee under leave restriction will be reviewed at least once every 6 months and a written decision made to continue or lift the restriction. If the review shows significant improvement, the supervisor will lift the restriction.
- C. Notwithstanding any other provision in this Agreement, an employee on leave restriction under this Section may be required to sign in and out on a daily basis when appropriate to the circumstances causing imposition of the leave restriction.

## SECTION 9

- A. Consistent with the applicable HHS Instruction at the time of the request and the provisions of this Article, the Employer will consider and may in its discretion grant requests for advance annual leave upon proper application, when:
  - 1. non-repetitive, non-routine circumstances exist;

2. the employee is eligible to earn annual leave;
  3. the request does not exceed the amount of annual leave that the employee would earn during the remainder of the leave year or the remainder of her/his appointment, whichever is shorter; and
  4. the Employer has reasonable assurance that the employee will return to duty and is not contemplating retirement or resignation.
- B. Annual leave earned on a current basis may not be used except in extenuating circumstances, until the amount of annual leave advanced to the employee has been repaid.

## **ARTICLE 15**

### **SICK LEAVE**

#### **SECTION 1**

- A. Employees may use sick leave accrued in accordance with law and regulations in the following situations:
1. Receives medical, dental, or optical treatment
  2. is incapacitated for the performance of his/her duties by physical or mental illness, injury, pregnancy, or childbirth;
  3. provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental or optical examination or treatment; or provides care to a family member with a serious health condition;
  4. makes arrangements necessitated by the death of a family member or attends the funeral of a family member;
  5. 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
  6. must be absent from duty for purposes relating to his/her 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
  7. Any other absences authorized by the Family Friendly and Medical Leave Acts under 5 CFR Part 630, Subparts D and L respectively.

#### **SECTION 2 Sick Leave for Family Care and Bereavement Purposes**

- A. In addition to the above-authorized uses of sick leave, and notwithstanding any other provisions in this Article, employees have the right, under regulations published pursuant to the Federal Family-Friendly Leave Act (5 C.F.R. Part 630, Subpart D), to use accrued sick leave for specified purposes. For example, an employee may request such leave if s/he needs to:
1. provide care for a family member who is incapacitated as the result of a physical or mental illness, injury, pregnancy, or childbirth, or who receives medical, dental, or optical examination or treatment; or

2. make arrangements necessitated by the death of a family member or to attend the funeral of a family member.

B. Sick leave may be used for the purposes in subsection 2 A above up to a total of 104 hours in any given year. Part-time employees may use up to the number of hours of sick leave s/he normally accrues during a leave year.

C. An employee may request sick leave for adoption-related purposes, including, but not limited to: appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and for any periods during which s/he is ordered or required by the adoption agency or by a court to be absent from work to care for the adopted child.

D. Adoptive parents who voluntarily choose to be absent from work to bond with or care for an adopted child may not use sick leave for this purpose. Upon approval, annual leave, leave without pay (LWOP), compensatory time, and/or earned credit hours may be used for this purpose.

E. The employee should submit the leave request for adoption purposes as early as possible, but not less than thirty (30) days in advance of the prospective starting date; if the starting date of leave is not foreseeable, the employee must provide such notice as is possible. Regardless of the length of the absence, supervisors may require employees to provide acceptable documentation to support the use of sick leave for adoption purposes.

### SECTION 3 Family Member Defined

For purposes of all Articles of this Agreement related to leave, "family member" means:

1. the employee's spouse and spouse's parents,
2. the employee's children, including adopted children and their spouses,
3. the employee's parents,
4. the employee's sisters and brothers and their spouses, and;
5. any individual related by blood or affinity whose close association to the employee is the equivalent of a family relationship, e.g., grandparents, grandchildren, godparents, godchildren, or a very close friend.

### SECTION 4 Sick Leave Request/Approval

- A. If the use of sick leave cannot be anticipated, the request for approval must be called in no later than the beginning of the employee's fixed tour of duty or, for an employee working a flexible tour of duty, no later than her/his normal starting time or the start of core hours, if s/he does not have a normal starting time. The employee must speak directly to her/his leave-approving official (LAO) (or her/his superior) or leave a voicemail with call-back number and/or e-mail message for that official prior to the beginning of core hours.
- B. If the absence extends beyond the period indicated to the LAO, the employee is responsible to ensure that they contact the LAO for a subsequent request and approval.
- C. Sick leave requests for a non-emergency medical, dental, or optical examination, operation, or treatment should be requested as soon as they become known. Such requests will be approved unless the employee's absence would be inconsistent with operational demands, in which event the employee would be given advance notice so that other scheduling arrangements can be made for the appointment.

#### SECTION 5 Scope of Sick Leave

- A. For purposes of this section, reference to sick leave includes that requested for any of the reasons listed in section 1 of this Article, regardless of the type of leave charged.
- B. An employee may be required to furnish reasonably acceptable evidence to substantiate a request for approval of sick leave any time the sick leave exceeds three consecutive workdays. The Employer is not precluded from requiring acceptable medical or other appropriate documentation for absences of three or less consecutive workdays. The supervisor will normally inform the employee of such a requirement at the time the leave is requested (which may be on the first, second, or third day of consecutive leave requested), although extenuating circumstances may warrant a request for medical documentation after the request was approved (e.g., if later-acquired evidence indicates that the employee was not sick for all/part of the day in question).
- C. When requested, an employee will provide written medical certification or other administratively acceptable evidence to the LAO in a timely manner, but no later than 15 days after the request. If the employee fails to provide the required medical documentation within the 15-day time period, the employee's sick leave request may be denied. Extensions of the 15-day time period may be granted where the manager determines the particular situation warrants an extension. Medical certification for sick leave will include all of the requirements contained in 5 C.F.R. §339 or other relevant requirements as determined necessary by the Employer.
- D. When the Employer has arranged for consulting physician(s) to advise appropriate officials on medical issues underlying leave requests, the assigned medical consultant will

review the medical documentation provided by an employee to support a sick leave request made under this Article. S/he may request additional information and/or documentation, as needed to make a reasoned medical determination, and the sick leave request may be denied if the employee refuses to cooperate with such request. Only the medical consultant may contact an employee's health care provider to discuss the employee's sick leave request.

#### SECTION 6 Sick Leave Restriction

A. If the Employer suspect's abuse of sick leave based upon a pattern of usage, the employee may initially be counseled, in the supervisor's discretion, depending upon the circumstances. The reason(s) given by the employee for the questioned usage during any counseling will be considered before any determination is made that abuse has occurred. Abuse must be based upon actual evidence of misuse of leave.

B. If there is evidence that an employee's leave pattern may indicate that an abuse of sick leave exists, the employee will be advised in writing that an acceptable medical certificate will be required for each subsequent absence for which sick leave is requested. When an employee is placed on sick leave restriction, the leave approving official will issue a written set of procedures or arrangements that the employee must adhere to in order to receive approval for future absences. A sick leave restriction letter will apply to all types of leave (including credit hours) used for sick leave purposes. The sick leave usage of every employee under sick leave restriction will be reviewed at least once every 6 months and a written decision made to continue or lift the restriction. If the review shows significant improvement, the supervisor will lift the restriction.

C. Except when an employee is placed on sick leave restriction pursuant to this section, employees will not be required to furnish a doctor's certificate on a continuing basis if they suffer from a chronic condition which does not necessarily require medical treatment although absence from work may be necessary and the employee furnishes periodic valid medical certification of the chronic condition supporting the period of absence.

#### SECTION 8

Absences qualifying for the use of sick leave may be charged to accrued annual leave, earned compensatory time, earned credit hours, or leave without pay, if so requested by an employee and approved by the supervisor.

#### SECTION 9

Sick leave will be charged in quarter-hour increments.

#### SECTION 10

A. An employee may be granted advanced sick leave if s/he has a serious injury, disability, or ailment. In considering requests for advanced sick leave, the Employer

will follow pertinent law and regulation in effect at the time the request is submitted, along with any applicable HHS Instruction and the provisions of this Article if not inconsistent therewith. Advanced sick leave will be approved or disapproved for periods of not more than thirty (30) days, under the following circumstances:

1. A written request has been properly submitted, including medical documentation.
  2. There is a reasonable assurance that the employee will return to duty and is not contemplating a resignation or retirement; and
  3. The employee has enough in her/his retirement account to reimburse the Employer for the advance, should s/he not return to duty.
- B. Sick leave earned on a current basis may not be used except in urgent circumstances until the amount of sick leave advanced to the employee has been repaid.
- C. Sick leave may be used for the purposes in subsection 1. A. 6. above up to a total of 104 hours (13 work days) in any given year. Part-time employees may use up to the number of hours of sick leave s/he normally accrues during a leave year.
- D. Full-time employees are entitled to use a total of 480 hours (12 work weeks) of sick leave each year for all family care purposes. Part-time employees are entitled to use an amount equal to 12 times the average number of hours in his/her scheduled tour of duty each week.

## ARTICLE 16

### FAMILY AND MEDICAL LEAVE

#### SECTION 1

##### Family and Medical Leave Act

A. Employees who have completed at least twelve (12) months of service and are not employed on an intermittent basis or a temporary appointment with a time limitation of one (1) year or fewer have the right, as established by the Family and Medical Leave Act (FMLA) and implementing regulations (5 CFR Part 630, Subpart L), to twelve (12) work-weeks of leave without pay during any twelve (12) month period for one or more of the following:

1. Because of the birth of a child of the employee and in order to care for such child;
2. Because of the placement of a child with the employee for adoption or foster care
3. In order to care for the spouse, a child, or parent of the employee, if such spouse, child, or parent has a serious health condition;
4. Because of a serious health condition that makes the employee unable to perform the functions of the employee's position

Employees may obtain information about their entitlements under the FMLA on the Office of Personnel Management website: <http://www.opm.gov/oca/leave/HTML/factindx.sap>

B. An employee may elect to substitute accrued or accumulated annual and/or sick leave for any part of the 12-week period of leave without pay described in Paragraph A above. However, this does not require the Employer to provide paid sick leave in any situation in which it would not normally provide such paid sick leave.

C. An employee seeking leave under this Section shall provide the Employer with not fewer than thirty (30) days' notice before the date the leave is to begin of the employee's intention to take such leave, unless the date of such leave is not reasonably foreseeable, in which case the employee shall provide such notice as is practicable.

D. Under 5 U.S.C. § 630.1207, the Employer may require that a request for leave under subsections A.3. or A.4. above be supported by written medical certification written by a health care provider. The following procedure will be followed:

1. The employee will provide the written documentation as provided in 5 U.S.C. § 630.1207(b). The information on the medical certification shall relate only to the serious health condition for which the current need for family and medical leave exists. The Employer may not



require any personal or confidential information in the written medical certification other than that required by regulations.

2. An employee must provide the written medical certification no later than fifteen (15) calendar days after the Employer requests such medical certification. The Employer's request may be in writing. If it is not practicable under the particular circumstances to provide the requested medical certification no later than fifteen (15) calendar days after the date requested by the agency despite the employee's diligent, good faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved but no later than thirty (30) days after the agency requested the medical certification.
3. If an employee submits a completed medical certification signed by a health care provider, the Employer may not request new information. However, the Employer's medical consultant may, with the employee's permission, contact the health care provider who completed the medical certification for the purposes of clarifying the medical certification.
4. If the employee presents the medical certification in a sealed envelope marked "MEDICAL CONFIDENTIAL" and addresses it to the consulting physician in care of the SHRC assisting the supervisor or employee. It will be reviewed only by the Agency's consulting physician and appropriate servicing HR Specialist --, not the manager or supervisor.
5. If the Employer doubts the validity of the medical certification, the Employer may require, at the Employer's expense, that the employee obtain the opinion of a second health care provider designated or approved by the Employer concerning information certified in the medical certification. Any health care provider approved by the Employer shall not be employed by the Employer or be under the administrative oversight of the Employer on a regular basis.
6. If the opinion of the second health care provider differs from the original certification provided under subsection D.2. above, the Employer may require, at the Employer's expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the Employer and the employee concerning the information certified in subsection D.2. above. The opinion of the third health care provider shall be binding on the Employer and the employee.

- E. All other conditions/requirements in 5 U.S.C. § 630.127 are applicable to leave used under the FMLA.
- F. The employee is responsible for notifying the supervisor of his/her intention to use FMLA leave.
- G. The use of FMLA leave cannot be invoked retroactively.
- H. If the employee is unable to provide the requested medical certification before leave begins, or if the agency questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the agency shall grant provisions leave pending final written medical certification.
- I. If after the leave has commenced and the employee fails to provide the requested medical certification within the specific time frame, the Employer may charge the employee as absent without leave (AWOL) or allow the employee to request that the provisional leave be charged as LWOP or charged to the employee's annual or sick leave accounts as appropriate.

## SECTION 2

### FMLA FOR MATERNITY OR PATERNITY PURPOSES

- A. Employees are entitled to 12 weeks of leave due to the birth, adoption and/or foster care of their child, and to provide care to a child who is sick. Parents may not use sick leave to be absent from work to bond with or care for a healthy child. Approval of leave for these reasons will be consistent with the provisions of this Agreement and applicable statutes and regulations.
- B. Periods of incapacity due to pregnancy are considered a "serious health condition" under FMLA. Charges to sick leave are appropriate for the period of incapacitation due to pregnancy and confinement, consistent with medical requirements and applicable laws and regulations. The employee also may request and be granted annual leave, LWOP, earned credit hours and/or compensatory time instead of sick leave for the period of incapacitation. This period of incapacitation during pregnancy is included in the 12 week FMLA entitlement. A female employee may substitute sick leave, annual leave, earned compensatory time, credit hours, donated leave, or any combination thereof, for any remaining time of the 12 week FMLA LWOP entitlement as appropriate.
- C. Pregnant employees' requests for modification of work duties or a temporary assignment will be considered in accordance with Article 40, Equal Employment Opportunity and reasonable accommodation policies.
- D. A parent shall be permitted to be absent on partial or full days of annual leave, sick leave, LWOP, earned compensatory time, credit hours, or any combination thereof, to aid or assist in the care of minor children or the mother of the children due to her confinement for

maternity reasons. Approval of leave for these reasons will be consistent with the provisions of this Agreement and applicable statutes and regulations.

### SECTION 3

For purposes associated with adoption of a child, an employee may request annual leave, sick leave, LWOP, and/or earned compensatory time and/or credit hours. (See Article 16 for information about use of sick leave for adoptions). The Parties recognize that it is in the interests of both the employee and the Employer that such requests shall be made as early as possible. The employee should submit the leave request for adoption purposes as early as possible, no less than thirty (30) calendar days, in advance of the prospective starting date; if the date of leave is not foreseeable (e.g. foreign adoptions), the employee shall provide such notice as is practicable. The individual circumstances must be considered in each instance by the leave approving official; reasonable requests shall be granted unless a workload or staffing problem prevents approval. Approval will be consistent with the provisions of the Agreement and applicable statutes and regulations.

### SECTION 4

Whenever a leave request under this Article is denied, upon request the Employer shall state the specific reasons in writing.

### SECTION 5

The provisions of this Article apply to married and unmarried employees alike, except to the extent such application would conflict with law or government-wide regulation.

### SECTION 7

No medical documentation required under this article shall be shared with a management official. All medical documentation shall be sent directly to the physician identified by the Agency.

## **ARTICLE 17**

### **LEAVE WITHOUT PAY**

#### **SECTION 1**

Leave without pay (LWOP) is a temporary, non-pay status and absence from duty. All employees are eligible for LWOP regardless of length of service or whether they have annual leave to their credit. Employees will not be required to exhaust their annual leave prior to use of LWOP. Requests to use LWOP are made in the same manner as are requests for annual leave and sick leave. The Employer will examine each request closely to ensure that the value to the government or the serious needs of the employee is sufficient to offset the costs and administrative inconvenience. Requests for LWOP may be granted consistent with operational demands and with consideration of optimal staffing levels.

#### **SECTION 2**

- A. An employee may request a period of LWOP not to exceed one (1) year to engage in full-time, job-related study. A program of study will be found to be job-related if, on balance, it will significantly benefit the Employer and improve the employee's ability to perform her/his current job or to achieve and perform another job with the Employer to which the employee can reasonably aspire.

Examples of some of the factors which are to be considered when reviewing an employee's request are: severity of the workload problem which her/his absence is likely to create, appropriate advance notice, cost, likelihood of the employee remaining with the Employer, likelihood of potential employee development with and without training, and reasonable alternate sources and means to secure the training.

- B. If the study is one which combines work and study, the work portion is subject to the outside employment requirements of the Employer.

#### **SECTION 3**

Employees may request LWOP for reasons other than those specified above. However, before approving such LWOP, the Employer should expect the employee to return to duty and that at least one (1) of the following benefits will result: increased job ability; protection or improvement of employee's health; retention of a desirable employee; or furtherance of a program of interest to the government.

#### **SECTION 4**

LWOP may never be granted in the following circumstances:

- A. to engage in private or commercial work where experience in such work is judged to be of no value to HHS;

- B. to engage in political activity prohibited by law;
- C. to hold a civilian position with any other federal department or agency; or
- D. To create a part time situation for a full time employee.

#### SECTION 5

LWOP will not be denied arbitrarily.

#### SECTION 6

Employees have a responsibility to become aware of the impact that periods of LWOP may have on their benefits and credible service. Employees who are requesting or are on periods of LWOP should contact the appropriate Human Resources Office for information specific to their situation.

## **ARTICLE 18**

### **OTHER LEAVE PROVISIONS**

#### **SECTION 1 Religious Compensatory Time**

- A. An employee may be granted annual leave or LWOP for a workday which occurs on a religious holiday, so long as the employee requests such leave at least three (3) workdays in advance.
- B. An employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to earn and use religious compensatory time (RCT) for the purpose of taking off without charge to leave.
- C. To the extent that such modifications in work schedule do not interfere with the efficient accomplishment of the Employer's mission, the Employer will in each instance: (1) afford the employee the opportunity to earn RCT; and (2) approve use of earned RCT to an employee requesting such time off for religious observances when the employee's personal religious beliefs require that the employee abstain from work during certain periods of the workday or workweek.
- D. The employee may earn such RCT before or after its use. A grant of advanced RCT must be repaid by the appropriate amount of RCT earned within four (4) pay periods of the date the RCT time was used. RCT will be earned and used in one-quarter (1/4) hour increments.

#### **SECTION 2 Military Leave**

- A. Any employee who is a member of the National Guard or other reserve unit of the U.S. Armed Forces will be entitled to military leave for each day of active Federal duty in such organization, up to the maximum number of workdays authorized under law and regulation in any calendar year.
- B. Approval of the military leave provided in the foregoing will be based upon the copy of the orders directing the employee to active duty and the copy of the certification of attendance and completion of such duty by an appropriate authority.
- C. Any employee contemplating the use of military leave will advise the Employer as soon as possible of the anticipated dates of such leave.

#### **SECTION 3 Court Leave**

An employee with a regular scheduled tour of duty is entitled to court leave in accordance with law and regulations. Court leave is appropriate for:

- A. jury duty with a federal, District of Columbia, state, or local court; and

- B. an employee who is summoned as a witness in a judicial proceeding in which the Federal, State, or local government is a party.

An employee who is called for court service should present the court order, subpoena, or summons to her or his supervisor. Any documentation provided by the court confirming the employee's presence must be provided to the supervisor upon the employee's return to duty. Fees, except for travel and parking, received by an employee granted court leave must be submitted to the appropriate HHS finance office.

#### SECTION 4

All absences from duty will be charged in one-quarter (1/4) hour increments.

#### SECTION 5

A request for leave will be approved or denied as soon as practicable after it is submitted to an appropriate leave-approving official.

## **ARTICLE 19**

### **EXCUSED ABSENCE/ADMINISTRATIVE LEAVE**

#### **SECTION 1**

Excused absence (sometimes called “administrative leave”) is an absence from duty which is administratively authorized without loss of pay and without charge to leave.

#### **SECTION 2**

Polling places throughout the United States are open for extended periods of time on election days, and absentee ballots are readily available in most jurisdictions. Thus, employees should rarely, if ever, need excused absence to vote. However, when voting polls are not open for at least 3 hours before or after an employee's regular hours of work (i.e., not including time earning credit hours), the Employer will normally approve an employee's written request for enough time off without charge to leave to report for work 3 hours after the polls first open and then report for work expeditiously, or leave work 3 hours early to vote shortly before the polls close, whichever requires the lesser amount of time off. Employees on alternative work schedules will attempt to arrange their schedules to work the maximum number of hours while still being able to vote. The employee's mode of transportation to work and related schedule flexibility will be considered in granting excused absence for voting. If an employee's voting place is beyond normal commuting distances and voting by absentee ballot is not permitted, the employee will normally be granted sufficient time off to make the trip to the voting place to cast a ballot but not to exceed 3 hours.

#### **SECTION 3**

- A. Employees may be granted excused absence of up to two (2) hours, on the day of donating blood during an official blood donation visit to the worksite. Such leave will include the amount of excused absence necessary to get to the donation site, donate blood, recuperate at the donation site, if needed, and return to work, if the employee's tour of duty is not over.
- B. Up to four (4) hours of excused absence for purposes of blood donation may be approved if appropriate due to special circumstances (e.g., distant location of the donation site, emergency situations, special type of donation program such as blood platelets, the physical effects of donation on the donor, or other unusual factors determined by leave-approving officials).
- C. If an employee is specifically requested to provide blood as a special donor, the employee may be given excused absence at a time and in an amount upon which the supervisor and the employee mutually agree. In unusual cases (e.g., electrophoresis), up to eight (8) hours may be approved if needed, in the view of appropriate health officials.

#### **SECTION 4**



- A. When it becomes necessary to delay the opening of, or not to open an office because of hazardous weather or other emergency conditions, the Employer, when applicable, will make a reasonable effort to inform employees through appropriate communications media.
- B. If the decision to close the workplace occurs during the workday, the notice of specific release of employees will be communicated down through supervisory channels. If hazardous weather or other emergency conditions occur during the workday and an administrative order to close the workplace has not been issued, the leave approving official may, in exceptional circumstances, grant up to 1 hour of excused absence on a case-by-case basis.

## SECTION 5

- A. Pursuant to 5 U.S.C. section 6327, each employee is entitled to a maximum of seven (7) days of absence per calendar year, without charge to leave to which the employee is otherwise entitled and without any reduction in pay, to serve as a bone-marrow donor, or a maximum of thirty (30) days per year to serve as an organ donor.
- B. Additional leave for this purpose may be authorized in accordance with other leave provisions and charged accordingly.

## **ARTICLE 20**

### **LEAVE SHARING**

#### **SECTION 1**

- A. An employee without available paid leave may request to become a donated leave recipient for a specific medical emergency involving her/himself or a family member (as defined in Article 15), which is expected to result in an absence from duty for at least twenty-four (24) consecutive or intermittent hours during the leave year, if the medical emergency would otherwise result in a loss of pay.
- B. Part-time employees or employees with uncommon tours of duty qualify for leave donations on a reduced formula pursuant to the OPM regulations.
- C. The employee must use up all of her/his accrued annual and sick leave before using donated leave.

#### **SECTION 2**

- A. The employee must submit a written request for donations of leave to her/his immediate supervisor. If the employee is unable to submit an application, a family member or co-worker may submit the application on her/his behalf. An application to become a donated leave recipient must include a brief description of the nature, severity, and anticipated duration of the personal or family medical emergency affecting the employee. The applicant must also include a statement from a physician or other qualified medical practitioner showing the nature, severity, and duration of the medical emergency. Additional information may be submitted, as appropriate, to supplement the application.

#### **SECTION 3**

- A. Leave recipients are eligible to retroactively substitute transferred annual leave. The employee must apply for transferred leave within thirty (30) workdays after the end of the medical emergency to be eligible for retroactive coverage to the beginning of the medical emergency.
- B. Transferred annual leave may be substituted retroactively for periods of LWOP or to liquidate advanced annual or sick leave granted to an approved recipient to cover absences during a medical or family emergency. It is up to the employee to decide how transferred leave is used.
- C. In making a decision to approve or disapprove the application, the designated official will consider whether the employee's absence from duty without available paid leave because of the medical emergency will, or is expected to, last for at least twenty-four (24) hours within the leave year.

- D. If an employee's application is disapproved, the written notice of disapproval will specify the reason(s) why the designated official has determined that the employee or her/his stated medical emergency does not satisfy the requirements for participation in the voluntary leave donation program.

#### SECTION 4

At the approved donated leave recipient's request, or with her/his consent, the Employer will arrange to inform other employees of the medical emergency situation and provide them with details on the procedure for donating some of their accrued annual leave to the specified employee through the voluntary leave donation program.

#### SECTION 5

A medical consultant, designated by the Employer, will review the medical documentation provided by an employee to support a request made under this Article. S/he may request additional information and/or documentation, as needed to make a reasoned medical determination, and the application for donated leave to address a medical emergency may be denied if the employee refuses to cooperate with such request. Only the medical consultant may contact an employee's health care provider to discuss the employee's medical condition and/or application for donated leave.

#### SECTION 6

- A. Pursuant to 5 U.S.C. §6391, in the event of a major disaster or emergency declared by the President that results in severe adverse effects for a substantial number of Federal employees, OPM may be directed to establish an emergency leave transfer program (ELTP). Under an ELTP, any Federal employee may donate unused annual leave for transfer to employees of her/his own or another Federal agency that are adversely affected by the disaster or emergency.
- B. If an ELTP is established by Presidential directive, employees may follow the procedures specified at such time by OPM and/or the Employer in order to donate annual leave under this program.

## ARTICLE 21

### HOURS OF WORK AND ALTERNATIVE WORK SCHEDULES

#### SECTION 1

- A. The DNHDP Alternate Work Schedules Program is designed to enable staff to adopt individualized work schedules that both meet employee needs and enable the Employer to carry out its mission effectively.
- B. The Employer is committed to fair and equitable employee participation in AWS where the establishment of the schedule will not interfere with the ability of the organization to meet its workload and programmatic objectives effectively.
- C. Specific job requirements may not allow for the same degree of personal choice for all employees. Each employee is expected to cooperate with their staff, co-workers, and supervisors to ensure an effective and successful AWS program.

#### SECTION 2

##### *Definitions*

- A. *Alternative Work Schedules (AWS)* - Schedules other than the standard fixed eight and one-half hour tour of duty, Monday through Friday. AWS include Flexible Work Schedules (FWS) and Compressed Work Schedules (CWS).
- B. *Basic Work Requirement* – The number of hours, excluding overtime hours, an employee is required to work or otherwise account for by leave, credit hours, holiday hours, excused absence, compensatory time off, LWOP, or time off earned as an award. The basic work requirement for full time employees is eighty (80) hours per biweekly pay period. The work requirement for part-time employees is the number of hours the employee must be present in a biweekly pay period. Work schedules for employees not on AWS will be established in accordance with government wide regulations.
- C. *Basic Workweek* - The basic workweek normally consists of five (5) eight (8)-hour days, Monday through Friday, or a permanent part-time schedule established by the Employer within its established administrative week.
- D. *Flexible Work Schedule (FWS)* - Variations of the traditional fixed work schedule that permit employees to vary their arrival and departure times within the parameters set forth in this Article. FWS consist of workdays with core and flexible hours.
- E. *Flexible Hours or Flexible Time Bands* - The specific hours of the workday within the tour of duty during which employees covered by a FWS may choose to vary their arrival and departure times within the parameters established in this Article.

- F. *Core Time or Core Hours* - The time periods during the workday, work week or pay period that are within the tour of duty during which an employee covered by a FWS is required by the agency to be present for work. Core hours do not apply on an employee's regular day(s) off under an approved FWS or for workdays fewer than eight (8) hours in duration as part of a flexible or compressed schedule.
- G. *Credit Hours* - Those hours within the flexible time bands of a FWS that, with advance supervisory approval, an employee elects to work in excess of his/her basic work requirement so as to vary the length of a workweek or workday.
- H. *Compressed Work Schedule (CWS)* - Fixed schedules that allow employees to complete the basic work requirement in fewer than ten (10) days in a pay period. Employees on approved CWS are not permitted to earn credit hours.
- I. *Tour of Duty* - The limits within which an employee must complete his/her basic work requirement.
- J. *Lunch Schedule* - The time during which employees must take a lunch period. Employees must take a lunch period and may not "save" any part of the lunch period to leave early or to extend subsequent lunch periods. Employees may extend this period within the lunch time band, provided that they receive prior supervisory approval. The additional time taken for lunch must be worked at the beginning or the end of the same workday. If the additional time would extend the employee's workday beyond the time in which s/he may earn credit hours, the extra time will be charged to annual leave, sick leave (if appropriate), leave without pay, credit hours, or accrued compensatory time.
- K. *Fixed Tour* - Employees may work a fixed official tour of duty, which is 8:00 a.m. – 4:30 p.m., Monday – Friday.

### SECTION 3

#### *Participation*

- A. Employee participation in AWS is subject to the approval of the DNHDP Director or designee.
- B. Except for the Nursing Department and other employees assigned shift work, all bargaining unit employees that meet the following requirements are eligible for participation in the AWS program:
  - 1. The employee is not on leave restriction
  - 2. The employee is not on a Performance Improvement Plan
  - 3. The employee has not received a disciplinary action related to the integrity of the AWS program within the last 6 months

- 4. The employee has not received any adverse action within the last 6 months
- C. Each employee is expected to fulfill the commitment to account for a full 80-hour biweekly period (full-time employees), or a pre-arranged schedule (part-time employees).
- D. The starting time for a workday may be fixed on the quarter hour.
- E. AWS allows employees to select their individual arrival and departure times from within the established flexible bands as outlined in section 4 below.

An employee whose work schedule has been approved will not be required to change his/her established tour of duty to accommodate the establishment of a new tour of duty for another employee.

## SECTION 4

### *Program Criteria*

Work days	Monday-Friday
Business hours:	8:00 am – 4:30pm
Flexible bands:	6:30 a.m. – 9:00 a.m. (arrival band) Monday – Friday 3p.m. – 7 p.m. (departure band) Monday – Friday
Flexible band for Credit hours only:	7 a.m. Saturday – 12 midnight Sunday
Lunch band:	11:00 am – 1:30 p.m.
Core hours:	9:00 a.m.-3p.m. (Monday – Friday)
Credit hours:	Maximum two (2) per day or three (3) per week

## SECTION 5

### *Authorized Flexible Schedules*

- A. Flexitour Schedule/Flexible Work Schedule (FWS) - FWS containing core hours on each workday in the biweekly pay period and in which a full-time employee has a basic work requirement of 8 hours a day (plus one-half hour official lunch), 40 hours a week, and 80 hours a biweekly pay period. The employee selects arrival and departure times within the flexible time bands. Once approved, this becomes the employee's fixed tour of duty. Prior approval by the Director or designee is required

to change this tour of duty. Employees must be at work or on approved leave during core hours. With prior supervisory approval, credit hours may be earned and used.

- B. Flexitime – This schedule allows employees to vary their daily arrival and departure times within the established flexible band. The basic work week requirement is 8 hours per day, 40 hours per week, and 80 hours in a biweekly pay period.

## SECTION 6

### *Compressed Work Schedules*

- A. Compressed Work Schedule (CWS) - Fixed schedules that allow employees to complete the basic work requirement in fewer than ten (10) days in a pay period. The following CWS are available to employees:
  - 1. 5-4/9 Plan. A compressed schedule in which an employee fulfills the basic work requirement of eighty (80) hours in a bi-weekly period over a span of nine (9) workdays: five (5) days one (1) week, four (4) days the other week, with a designated starting time within the time bands at that location. Under this Plan, employees work eight 9-hour days (plus one-half hour official lunch) and one 8-hour day (plus one-half hour official lunch) in a biweekly pay period. The employee must have a fixed tour of duty within the time bands established in this Article and shall not work under a schedule that results in the payment of night pay.
  - 2. 4-10 Plan A compressed schedule in which an employee fulfills their basic work requirement of eighty (80) hours during the biweekly pay period in four (4) ten (10) hour days (plus one-half hour official lunch) each week with one (1) scheduled day off per week. The employee must have a fixed tour of duty within the time bands established in this Article and shall not work under a schedule which results in the payment of night pay.
- B. With the exception of nurses and other employees assigned shift work, all employees will have the option of applying for a fixed 5/4/9 or 4/10 schedule.
- C. Employees working a compressed schedule are not eligible to earn credit hours.
- D. With supervisory approval, an employee on CWS may switch his/her day off to another day within the same pay period.
- E. CWS Holiday Rules
  - 1. Employees on a CWS are entitled to basic pay for the number of hours of the CWS that fall on a holiday.

2. In accordance with OPM guidelines regarding holidays for employees working CWS, if the employee's regularly scheduled day off is Friday or Monday and a holiday falls on one of those days, the employee's day off remains unchanged. Instead, the holiday for the employee changes as follows:
  - a. If the "actual" holiday falls on Sunday, the "in lieu of holiday" is the following workday (Monday for most employees). However, if Monday is an employee's day off under CWS, then Tuesday becomes his/her "in lieu of" holiday.
  - b. If the actual holiday falls on Monday, the "in lieu of holiday" is the previous workday. Thus for an employee whose day off under CWS is Monday, the "in lieu of" holiday would be the previous Friday, or Thursday for those employees on 4/10 who take the first Friday and second Monday off.
  - c. If the actual holiday falls on Friday or Saturday, employees whose day off under CWS is Friday would have an "in lieu of" holiday on Thursday.

## SECTION 7

### *Credit Hours*

- A. An employee must obtain advance supervisory approval to earn credit hours. The earning of credit hours may be approved retroactively where the circumstances warrant (e.g., where it is not possible for the employee to obtain advance approval).
- B. The use of credit hours must be approved in advance.
- C. Supervisors may approve requests for up to three credit hours per week. Employee requests to work more than three credit hours per week must be submitted in writing, with the proper justification, through their supervisor to the DNHDP Director or designee for approval.
- D. Approval to earn credit hours may be granted orally the same day as requested. However, written approval must be provided three (3) workdays after the date of the request.
- E. Credit hours may be earned only when work is available or circumstances support continuing the work. The earning of credit hours must be voluntary on the employee's part.
- F. Credit hours may only be used after they are earned and may be earned and used in increments of ¼ hour.



- G. Credit hours may be used in conjunction with lunch.
- H. Credit hours may be used to account for authorized absences during core hours.
- I. Credit hours can only be earned within the flexible time bands specified in Section 4 of this Article.
- J. Eligible full-time employees may not carry over more than twenty-four (24) credit hours from one pay period to the next. The maximum allowed carry-over hours may be carried over indefinitely.
- K. Eligible part-time employees may accumulate more than one-fourth of their biweekly work hours, but the maximum carryover for part-time employees may not exceed one-fourth of their scheduled biweekly tour of duty. Part-time employees may only earn credit hours immediately before or after their tour of duty.
- L. An employee in travel status may earn credit hours for work performed at the temporary duty location if the time requested meets the definition of hours of work, and it is requested and approved in advance.
- M. The same procedures for requesting and approving credit hours in the office will apply when the employee is at the temporary duty location.
- N. Approval to use earned credit hours will follow the same procedures as approval for annual leave in Article 15 of this Agreement. Credit hours can be used in lieu of or together with approved leave and/or compensatory time to take partial or full days off.
- O. Employees may earn and use credit hours within the same pay period.

## SECTION 8

### *Approval and Denial of AWS*

- A. Employees must receive advance approval from the DNHDP or designee to start working an alternative work schedule or to change from one alternative work schedule to another. The alternative work schedule application, Appendix 2, will be used for these purposes and must be submitted to the DNHDP Director or designee at least one pay period prior to the proposed effective date. Approved requests will be implemented as soon as possible, but must commence at the start of a pay period.
- B. The Employer will approve, disapprove or modify an employee's request for an AWS tour of duty based on such factors as workload and coverage. As such, the Employer will have to determine whether the establishment of the requested AWS tour of duty will or will not interfere with its ability to effectively meet its workload and program objectives. It is understood that the Employer's mission includes providing various services to its customers including the rest of the Agency, other Executive Branch

components, states, local agencies, and the general public. If a request to work an AWS is denied, the Employer will explain the reasons for the denial to the employee in writing upon request.

- C. If an employee's requested work schedule is denied, the DNHDP Director or designee will explain the reasons for the denial to the employee orally and, if requested, in writing.
- D. Supervisors may review an employee's work schedule to recommend to the DNHDP Director or designee bona fide changes as appropriate. Employees are not required, however, to reapply.

## SECTION 9

### *Request for Changes to AWS*

- A. Individual employees desiring to change their existing AWS will submit an application (Appendix 2) prior to the requested change to the DNHPD Director or designee through their immediate supervisor. Changes will be approved and implemented or disapproved as soon as practical, but not later than fifteen (15) days.
- B. Upon mutual agreement, an employee on a compressed work schedule may vary his/her off day. Either the Employer or the employee may initiate a discussion to vary a off day.

The DNHDP Director or designee may alter or terminate an employee's AWS schedule, including varying the employee's day off, if the factors/circumstances used in approving the original AWS change. Such factors include emergencies, workload problems, and inadequate office coverage. In those situations where it is necessary to change the employee's AWS, the Employer will make every effort to limit this change to as short a time as necessary.

## SECTION 10

Should two (2) or more similarly situated and qualified employees request the same AWS, and the Employer cannot accommodate all the requests, the employees will be asked to resolve the scheduling problem between themselves. This may include establishing a fair and equitable rotation schedule for disputed hours or days off to which the Employer and affected employees mutually agree. If no other resolution can be found, approval shall be based on employee seniority determined by the service computation date.

## SECTION 11

### *Termination/Suspension of AWS*

#### *A. Termination*

Employees may be terminated from the AWS program for the following reasons:

1. Failure to meet eligibility requirements outlined in Section 3 above.
2. Falsification of time and attendance records (which may also be grounds for other disciplinary or adverse action).
3. For performance-related reasons as follows:
  - a. For those employees that entered the program with an overall rating of fully successful or higher, failure to receive an overall rating of fully successful may result in termination of participation in AWS. Termination is not automatic. Before the employee's AWS is terminated, the employee and his/her manager will meet to discuss the appropriateness of continuing on the program.
  - b. For those employees that entered the program with an overall rating of minimally successful, failure to achieve an overall rating of fully successful may result in termination of participation in AWS, provided the employee had a minimum of ninety (90) days on AWS prior to receipt of the next rating of record. Termination is not automatic. Before the employee's AWS is terminated, the employee and his/her manager will meet to discuss the appropriateness of continuing on the program.

B. Employees who are terminated from AWS may reapply for consideration to resume participation in AWS no earlier than six (6) months from the date of termination.

C. *Suspension*

An employee who fails to comply with the requirements and provisions of the DNHDP AWS Program may be suspended from participation in an AWS in the following manner:

1. If an employee fails to comply with the AWS requirements of this Article, a supervisor shall notify and counsel the employee on the need to comply with all of the provisions of the program. The supervisor will document this counseling and give the employee a copy of the documentation that includes a notice that future failure to comply by the employee will result in suspension of the employee's participation in the program.
2. If the employee continues not to comply with the AWS program requirements after such written notification, the supervisor may suspend the employee from participating in the program for up to three (3) months. Following completion of the suspension period, the employee shall be allowed to resume participation in the program, unless the employee has continued to present time and attendance problems during the suspension period.

## SECTION 12

### *Other Provisions*

- A. Within 30 days after the implementation date of this Agreement, all employees with an approved AWS agreement will be required to reapply. Failure to reapply within this period will result in termination of the current AWS agreement.
- B. The Employer reserves the right to review AWS schedules every three (3) months or more often if necessary, to make changes as appropriate.
- C. The determination as to whether employees will be required to sign in or sign out, or punch in or out, to record their arrival or departure times will be at the discretion of the unit supervisor. However, employees will be required to do so if they abuse time and attendance rules and/or the time reporting method established at the local site.
- D. Employees vacating their current position either by reassignment or reorganization for which an SF-50 is issued, must reapply for consideration of AWS. This provision is not intended to apply to reorganizations or reassignments that do not result in staffing changes or for reorganizations or reassignments that result only in a supervisory change.
- E. An employee on a flexible work schedule is not considered tardy until the beginning of the core hours unless:
  - 1. The supervisor has asked the employee to arrive at a certain time to attend a regularly scheduled or special staff meeting or other special activity, e.g., training courses or conferences, and the employee arrives after that time; or
  - 2. The employee has been designated to cover a particular time and arrives after that time.
- F. Employees in travel or training status or on detail will adjust their biweekly tour of duty to adhere to the work schedule of the detail organization or to a schedule that will fulfill the purposes of the official travel. A basic workweek is normally scheduled on five (5) consecutive eight (8) hour days, Monday through Friday.
- G. This Article does not prohibit an employee from applying for an uncommon tour of duty for specific personal reasons (for example, because of transportation arrangements, day care arrangements, education or training schedules, or health reasons).
- H. As soon as an employee is transferred into or otherwise becomes part of the bargaining unit he or she may apply and be considered for an AWS or other uncommon tour of duty.
- I. Upon an employee's request, the Employer may, subject to workload requirements, establish a special tour of duty (e.g., a split shift) for educational purposes in

accordance with applicable laws, rules and regulations.

- J. Employees on a CWS shall not work a schedule which results in the payment of night differential pay (NDP).
- K. Employees on a FWS are entitled to NDP for night hours that are required as a part of their regularly scheduled tour of duty. However, they are not entitled to NDP solely because they elect to work at a time when NDP is authorized. Employees who work regularly scheduled overtime at night are entitled to NDP.
- L. Employees on a FWS are not entitled to NDP when they earn credit hours.

## SECTION 13

### *Termination of the AWS Program*

In accordance with law and implementing regulations relating to AWS, bargaining unit employees may participate in the AWS system described in this Article, unless it would create an adverse agency impact. Adverse agency impact is defined in 5 U.S.C. § 6131(b) as:

1. a reduction in the productivity of the agency;
2. a diminished level of services furnished to the public by the agency; or
3. an increase in the cost of agency operations (other than a reasonable administrative cost relating to the process of establishing a flexible or compressed schedule).

## **ARTICLE 22**

### **OVERTIME, HOLIDAY WORK, AND COMPENSATORY TIME**

#### **SECTION 1**

- A. Because pay matters are regulated by law, government-wide regulation, and HHS regulation, this Agreement cannot provide exclusive and authoritative guidance regarding all overtime matters. Additionally, some employees are covered by the Fair Labor Standards Act (FLSA) and some employees are not (commonly referred to as “FLSA-non-exempt” and “FLSA exempt” employees, respectively). Such coverage determines the manner in which overtime issues are dealt with and will determine the course of action the Employer will take. The determination of FLSA-exempt or non-exempt status is a decision reserved to the Employer, based upon the duties of the position.
- B. In order to ensure that employees completely understand what rights they may have to be paid overtime compensation, the Employer will notify the employee as to whether s/he is exempt or non-exempt for purposes of the FLSA on her/his SF-50 (Notification of Personnel Action form).

#### **SECTION 2**

Work officially ordered or directed by the Employer, and performed by the employee, which is in excess of eight (8) hours in a day or forty (40) hours in a week is considered overtime except when the employee is working credit hours or another form of AWS as specified in Article 21 (Alternative Work Schedules). FLSA-exempt and non-exempt employees will be compensated for overtime or holiday work, as appropriate to their status, in accordance with all applicable laws, rules, and regulations at the time the work is performed, along with this Agreement to the extent not inconsistent therewith.

#### **SECTION 3**

To the extent practicable, overtime will be distributed equitably and fairly among all qualified and capable employees suitable to perform the particular assignment, as determined by the Employer.

#### **SECTION 4**

All overtime and compensatory time will be earned and paid in fifteen (15)-minute increments.

#### **SECTION 5**

The Employer will staff overtime assignments from a pool of appropriately-qualified volunteers unless none is available or, due to the nature of the task, it is impractical to use

volunteers (e.g., a case assigned over a long term to a particular employee). The Employer will select employees based upon their familiarity with subject matter and task so as to be best able to perform work demands, and to possess the skills and knowledge needed to accomplish the work effectively, efficiently, and cost-effectively.

A. When the overtime is voluntary and more qualified and capable employees (as determined by the Employer) volunteer than are needed to perform the work, the employees assigned overtime will be selected on a rotational basis, based upon seniority using the Service Computation Date.

B. Employees who are selected for voluntary overtime assignments will not be included among the candidates in subsequent voluntary overtime situations until all qualified and capable employee-volunteers (as determined by the Employer) have had the same opportunity.

C. Where the overtime is voluntary and the number of qualified and capable employees (as determined by the Employer) who volunteer equals the number required to accomplish the work available, all volunteers will work the overtime.

D. Where the overtime is mandatory and there are no qualified and capable volunteers, employees with the skill and knowledge needed to perform the work (as determined by the Employer) will be assigned on a rotational basis based upon seniority using the Service Computation Date.

E. An employee who is ordered to work overtime pursuant to subsection D above may be relieved if the employee finds a qualified and capable replacement acceptable to and approved in advance by the supervisor. However, those employees maintain their places in the rotation.

Nothing in this Article may preclude the employer from exercising its discretion to seek volunteers to work on compensatory time, so long as the procedure identified in this section is followed.

## SECTION 6

An employee who is absent on military leave on an overtime day which s/he is regularly scheduled to work is entitled to overtime compensation for that day, provided that the employee is in a pay status for all forty (40) hours of the basic workweek that week.

## SECTION 7

A. Employees who work irregular or occasional overtime may, upon request, be granted compensatory time in lieu of payment for such work. Such requests may be denied if the supervisor has reason to believe that the workload during the twenty-six (26) pay periods after the pay period in which the employee worked is likely to prevent her/his using the compensatory time before it is lost.

- B. Once earned, compensatory time must be used by the end of the twenty-sixth (26th) pay period after the pay period in which the employee worked it. If an FLSA-exempt employee does not use earned compensatory time during those twenty-six (26) pay periods, the compensatory time will be lost. No pay will be provided to any FLSA-exempt employee for unused compensatory time. FLSA non-exempt employees will be paid for compensatory time earned in lieu of overtime, consistent with the requirements of law, rule, and regulation.
- C. Compensatory time earned in connection with otherwise non-compensable hours in a travel status will be earned and used consistent with applicable law and Government-wide regulation (currently 5 C.F.R. Part 550, Subpart N).

## SECTION 8

An employee who has obtained prior written or verbal approval from her/his supervisor will be granted overtime or compensatory time, as appropriate, except where the provisions of Article 25 (Alternative Work Schedules) apply. Compensatory time for travel will be authorized only for “hours of employment” as defined in 5 U.S.C. 5542 and under standards established by applicable decisions of adjudicatory bodies.

## SECTION 9

When the Employer requires the services of employees on an established holiday, it will seek to fill its needs through volunteers qualified and capable of performing the duties assigned (as determined by the Employer). When the Employer is unable to fill its needs through qualified and capable volunteers, it will assign the work to such employees on a rotational basis using the Service Computation Date to determine the order. Any employee involuntarily assigned to work on a holiday may be relieved if s/he finds a qualified and capable replacement acceptable to and approved in advance by the supervisor. To minimize the adverse repercussions of assigning employees to work on holidays, the employer will strive to provide as much notice as possible to the affected employees.

## SECTION 10

The employer will maintain appropriate overtime records to show who worked overtime and when.

## SECTION 11

Irregular or occasional overtime work performed by an employee on a day when work was not scheduled for her/him and for which s/he is required to return to her/his place of employment, is deemed at least two (2) hours in duration for the purposes of premium pay, either in money or compensatory time off.



## **ARTICLE 23**

### **FLEXIBLE WORK PLACE ARRANGEMENT PROGRAM**

#### **SECTION 1**

The Flexible Work Place Arrangement Program (FWAP) is a program that permits employees to work at home or at other approved locations remote to the conventional office site. For purposes of this Agreement, the terms “FWAP”, “flexiplace” and “telecommuting” are synonymous and include working at home or in satellite office sites or other approved flexiplace work sites. The HHS and HRSA FWAP (or “Telework Program”) policies and applications are hereby incorporated by reference. To the extent that there is a conflict between the policies and this Article, the policies shall prevail. (Appendix 3, 23-1, 23-2)

#### **SECTION 2**

The Parties anticipate that this program will result in increased productivity, improvements in employee morale, job satisfaction, and reduced absenteeism. Participation in flexiplace is not an entitlement nor is it an accommodation for dependent/family care. The Employer retains the right to determine the appropriateness and approval of any flexiplace arrangement. The Employer has the right and responsibility to administer the flexiplace program so as to ensure that it supports the accomplishment of the agency’s mission, including the provision of high quality (i.e., responsive, accurate, uninterrupted, seamless, transparent) service to internal and external customers and maintenance of the coverage management reasonably determines to be necessary during hours of operation.

#### **SECTION 3**

Situations appropriate for flexiplace depend on the specific nature and content of the job, rather than just the job series and title.

- A. A flexible work place arrangement may be used when there is recurring opportunity to perform work at an alternate site. For example, the work does not require interaction and collaboration with customers or peers on a daily basis, it does not require specialized equipment, systems, or reference materials unavailable except at the conventional office, and the employee’s work habits are such that once an assignment is given, it can be accomplished without further oversight or supervisory consultation.
- B. A flexible work place arrangement may also be used on an occasional or episodic basis, for individual days or hours within a pay period, or for a special assignment or project on a short term basis (two consecutive weeks or less). For example, such work tasks may include: data analysis, reviewing grants/cases, writing decisions or reports; telephone intensive tasks such as obtaining or collecting information, following up on participants in a study or setting up a conference; and some computer oriented tasks such as programming, data entry and word processing. Typically, such tasks require uninterrupted concentration and result in measurable work outputs or products.

#### **SECTION 4**

- A. Flexible work place arrangements must be consistent with maintaining adequate physical office coverage during hours of operation.
- B. The Parties agree that specific individual participation in flexiplace must be considered on a case by case basis.
- C. Each employee must meet the following criteria to be considered eligible to participate in the flexiplace program.
  - 1. The employee has held her/his current position for at least six (6) months;
  - 2. The employee's current supervisor has been her/his supervisor in that position for at least six (6) months, unless otherwise agreed to by the supervisor and the employee;
  - 3. The employee's latest rating of record is not below "Achieved Expected Results" or better, and there is no reasonable cause to believe this level of performance will drop;
  - 4. The employee is not on leave restriction;
  - 5. The employee is not on a performance improvement plan (PIP);
  - 6. The employee has not received any disciplinary or adverse action in the last twelve (12) months;
  - 7. The employee has demonstrated the ability to initiate his/her own work, to work without direct supervisory oversight, to recognize when supervisory or other assistance is needed on a project;
  - 8. The employee's fully successful performance of the work does not require:
    - a. Daily and frequent use of specialized equipment or technology that is available only at the official duty station;
    - b. Daily and frequent face to face contacts with co-workers, managers and/or customers;
    - c. Daily and frequent access to confidential or sensitive data and/or information (not attainable from home) such as personnel and/or payroll records or proprietary information protected from unauthorized disclosure by the Privacy Act of 1974 and its implementing regulations;
  - 9. Employees participating in the Employer's flexiplace program and using their primary personal residence (or any other approved site not fully-equipped with these items) may be required to provide at their own cost all equipment, supplies, and/or services necessary for working at the alternate duty station. This includes appropriate furniture for the work station, a computer capable of operating with all necessary software to perform official duties, a printer, telephone service (including a second line, DSL, or a cell phone to enable continuous accessibility while working at the computer), and any

other equipment required by the Employer for performance of official duties in a seamless and transparent manner.

10. The employee has received prior training on the eligibility, responsibility and other prerequisites for participation and/or continued participation in the Telework Program or FWAP as prescribed by this Agreement and the Telework Enhancement Act (TEA) of 2010 (Public Law 111-292). In accordance with the TEA, employees who have been teleworking prior to December 9, 2010 are grandfathered in, and are not required to take the training. All new employees and those employees who began any telework assignments after December 9, 2010 must take the required training.

## SECTION 5

- A. To apply to participate in a FWAP, an employee must submit his/her request to the DNHDP Director or designee through his/her immediate supervisor using the form at Appendix 3, 23-3. If a request to work a flexiplace is denied, the Employer will explain the reason(s) for the denial to the employee in writing, upon request.
- B. Approved flexiplace agreements/plans will be reviewed at least every 90 days and when employees are placed in positions in different organizational units/offices. These reviews are intended to address any problems or concerns, and to ensure that flexiplace agreements/plans are accurate and continue to meet the criteria in Section 6.
- C. New supervisors or supervisors assigned to new units should review all existing flexiplace agreements to become familiar with them.
- D. The supervisor may modify (including temporary suspension of) the employee's flexiplace agreement/plan for such reasons as workload or office coverage needs, emergencies, or other work exigencies. Upon modifying an employee's flexiplace agreement/plan, the supervisor will notify the employee at least seven (7) days in advance of implementation of the modification.
- E. In some circumstances, the need to maintain adequate staffing levels in the traditional office worksite for such purposes as telephone coverage or immediate customer service may result in conflicts among flexiplace participants regarding scheduling of days to be worked on a flexiplace arrangement. If such conflicts occur, the supervisor(s) and the affected employees will attempt to resolve the conflict in a manner which is satisfactory to the supervisor(s) and affected employees. If such discussions do not result in a satisfactory resolution, the following tiebreaker formula will apply.
  1. The flexiplace arrangements and preferences of employee(s) that are already participating in the program shall take precedence over the preferences of new applicants. If the conflict is between employees who are already participating, or between two or more new applicants, the tiebreaker shall be by seniority (high seniority). Seniority shall be determined by employees' Service Computation Dates (SCDs).

2. The above tiebreaker language is intended to apply to situations when it is necessary to limit the total number of flexiplace absences to the extent required to maintain adequate coverage in the traditional office worksite so that the mission of the Employer is not impaired.
- F. Flexiplace arrangements (agreements) are between the employee and the DNHDP. Employees who are detailed or permanently assigned to another organizational unit of the Employer, under another supervisor, must re-apply for flexiplace participation, execute a flexiplace program agreement with their new supervisor, and be approved by the DNHDP Director or designee in order to continue working at an alternate site.

## SECTION 6

- A. Participation in the FWAP is voluntary. However, the Employer may require employees to work at an alternate site in case of emergency situations.
- B. Participants in the flexible work place program shall be permitted as part of a flexiplace arrangement to continue to work any AWS schedule they may already be working. Employees who work approved flexible work schedules and vary their start times are required to inform their supervisors, prior to commencement of their tours of duty, of their start times and end times for those days they work at an alternate site pursuant to this article.
- C. The official duty station of an employee participating in the flexible work program is the conventional work site.
- D. Employees on a flexible workplace arrangement are required to report to the official duty station according to the schedule determined by the Employer. Employees on continuing flexible work arrangement should expect to report to the conventional work site a minimum of four days per week (for employees on a compressed work schedule, the employee's regular day off will count as a day away from the conventional work site for the purpose of this requirement). The Employer may approve deviations from this minimum weekly requirement for days at the official duty station, but any such deviations shall be at the sole discretion of the Employer and shall not be subject to the grievance procedure of Article 38. In addition, the Employer reserves the right to require more frequent days at the conventional work site for situations deemed appropriate by the supervisor.
- E. The Employer will make reasonable efforts to provide alternative methods, such as teleconferencing, use of fax and e-mail, and/or other methods to avoid unplanned situations requiring the employee to report to the conventional work site. However, when situations occur that require the employee to return to the conventional office, travel to and from the office is normal commuting time and as such is not considered hours of duty.
- F. As a minimum level of accessibility, the employees in the flexible work place program are expected to be as available to managers, co-workers and customers by telephone, E-

mail, voice mail or other communications media during their scheduled daily tours of duty as when working at the official duty station.

- G. Overtime and credit hours worked must be approved in advance by an authorized official. For employees on flexible schedules, work that is ordered and approved in advance which is in excess of eight (8) hours per day, forty (40) hours per week, or eighty (80) hours per pay period, is considered overtime work. For employees on compressed schedules, work that is ordered and approved in advance which is in excess of the number of hours worked daily on the compressed schedule is considered overtime work. Compensatory time may be substituted for overtime pay in accordance with law, regulation, and Article 22, Overtime, Compensatory Time, and Holidays, of this Agreement. Nothing in this Article diminishes an employee's FLSA rights as provided for by law and regulation.
- H. Policies and practices for requesting and using leave remain unchanged, except as provided in the applicable articles of this Agreement.
- I. For purposes of timekeeping, participants will certify each pay period indicating hours worked or any exceptions to the scheduled tours of duty specified in their flexible work place program agreements. Falsifying time reports is cause to terminate participation in the flexible workplace program and may be grounds for other adverse or disciplinary action.
- J. The Employer has the legal obligation and right to be provided with reasonable assurance that employees are working at alternate sites when scheduled. Means of obtaining such reasonable assurance may include occasional supervisor telephone calls, occasional visits by the supervisor to the employee's alternate site (with twenty-four (24) hours notice), and determining the reasonableness of work output for the amount of time worked at the alternate site. The Employer will require employees to provide information, including periodic reports, concerning work accomplished at alternate sites.

## SECTION 7

- A. A flexible work place arrangement may not be feasible where there is a prohibitive cost to duplicate the same level of confidentiality or security as exists in the employee's official duty station.
- B. Flexiplace home sites must have adequate workspace, lighting, residential telephone service, power, smoke alarms and adequate security.
- C. The Employer has the right to inspect the home work site at any time to ensure its suitability.
- D. Employees must comply with all security measures and disclosure provisions, including password protection and data encryption so that the Privacy Act or other security standards are not compromised.
- E. Employees must protect all government records and data against unauthorized disclosure,

access, mutilation, obliteration and destruction.

- F. Employees must ensure that government provided equipment and property is used only for authorized purposes. Reasonable care should be used in operating all equipment. The servicing and maintenance of government owned equipment is the responsibility of the Employer.

## SECTION 8

- A. The Employer may terminate an employee's participation in the program for cause, such as:
  - 1. Failure to continue to meet the criteria listed in Section 4 above;
  - 2. Failure to adhere to the provisions of the Agreement;
  - 3. Failure to accurately and truthfully report time worked;
  - 4. Organizational exigencies that impact on the mission of the Employer, and require the employee to perform work at the official duty station;
  - 5. For misconduct in connection with the employee's obligations under the flexible work place program; and
  - 6. Verifiable information that has been shared with the employee indicating customer dissatisfaction with the employee's performance or conduct.

## SECTION 9

- A. Employees participating in the flexible work place program will not be excused from work because workers at the official duty station are dismissed or not required to work due to an emergency if the emergency does not impact the work being performed at the alternative work site. If an emergency occurs at the flexiplace work site that impacts on the employee's ability to perform official duties, the employee will immediately notify the Employer. The Employer will direct the employee to another work site, grant excused absence, or allow the employee to request appropriate leave, e.g., annual leave or LWOP.
- B. The Employer will not be responsible for operating costs, home maintenance, or any other incidental costs (e.g., utilities) associated with the use of the flexiplace work site.
- C. The employee is covered under the Federal Employees Compensation Act if injured in the course of performing official duties at the alternative work site.
- D. The Employer will not be held liable for damages to the employee's personal or real property during the performance of official duties or while using Employer equipment in the alternative work site, except to the extent the Employer is held liable under the Federal Tort Claims Act claims or claims arising under the Military Personnel and Civilian Employees Claim Act.

## **ARTICLE 24**

### **PERFORMANCE MANAGEMENT APPRAISAL PROGRAM**

#### **SECTION 1**

- A. The purpose of the Performance Management Appraisal Program (PMAP) is to improve employee and organizational performance. It encourages continuous communication between employees and supervisors, provides a mechanism to evaluate employee performance and identify strengths and weaknesses, and provides a mechanism to address deficient performance effectively through such activities as increased communication, coaching, training, and if necessary, through appropriate personnel actions. Feedback and ratings under the PMAP system will be provided in a fair, consistent, constructive and equitable manner. This Article is intended to be used in conjunction with the Department of Health and Human Services PMAP document (Appendix 4) issued August 11, 2011. To the extent that there is a conflict in this article or contract with the PMAP policy or other management-issued performance documents, the parties' collective bargaining agreement governs. In the event the Department promulgates a new PMAP during the duration of this Agreement, this Article is subject to being reopened.
- B. The Employer and Union agree that the effectiveness of this program will be evaluated within six (6) months from the end of the performance period by a joint labor-management workgroup. There will be equal numbers of AFGE representatives and management officials.

#### **SECTION 2**

The objectives of the PMAP are to:

- Improve employee and organizational performance by defining critical aspects of employee performance and assessing results achieved;
- Communicate and clarify organizational goals and objectives to employees;
- Facilitate evaluation of employee performance;
- Encourage communication between supervisors and employees;
- Identify good employee performance for recognition;
- Address deficient performance effectively through such things as increased communication, coaching, training and if necessary, through appropriate personnel actions; and
- Provide uniform and consistent evaluation of performance for all covered employees.

#### **SECTION 3**

The PMAP covers all AFGE, Local 3553 bargaining unit employees covered by this Collective Bargaining Agreement.

## SECTION 4

All bargaining unit employees will receive a performance appraisal that will be based on a comparison of the employee's performance with the standards and elements established for the appraisal period. Terms used in this Article are defined as follows:

- A.     **Appraisal (Rating)**  
means the process under which performance is reviewed and evaluated.
- B.     **Appraisal**  
period means the established period of time for which performance will be reviewed and a rating of record will be prepared. The appraisal period normally covers the Calendar Year (January 1 through December 31). An employee must be under a performance evaluation plan a minimum of ninety (90) calendar days during a rating period to receive a rating.
- C.     **Critical Element**  
means work assignments or responsibilities of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. Such elements are used to measure performance only at the individual level.
- D.     **Performance**  
means an employee's accomplishment of assigned work or responsibilities.
- E.     **Performance Plan**  
means all written, or otherwise recorded, performance elements that set forth expected performance. A performance plan must include all critical and non-critical elements as determined by the Employer and their performance standards (measures).
- F.     **Performance standard**  
means a statement of the performance threshold, requirement, or expectation that must be met to be appraised at a particular level of performance. A Performance Standard (Measure) may include, but is not limited to, quality, quantity, timeliness and manner of performance.
- G.     **Progress review**  
means communicating with the employee about his/her performance to date compared to the performance standards for each element. Progress reviews are important for providing consistent performance feedback to employees and can be conducted at any time during the appraisal period. One formal progress review is required and is generally conducted midway through the appraisal period.
- H.     **Rating Official**  
means the official responsible for informing the employee of the critical elements of



his/her position, establishing performance requirements, providing feedback, appraising performance, and assigning the summary rating. The rating official is normally the employee's immediate supervisor.

- I. **Rating of Record (Final Rating)**  
means the performance rating prepared at the end of an appraisal period for performance of Agency-assigned duties over the entire period and the assignment of a summary level within a pattern. A final rating summarizes and measures an employee's performance on each element for which there has been an opportunity to perform for the minimum rating period. In most cases a summary rating (see definition below) will become the rating of record.
- J. **Summary rating**  
means combining the written appraisal of each critical element (on which there has been an opportunity to perform for the minimum period, i.e., 90 calendar days) to assign a summary rating level. The rating official derives the summary rating from appraising the employee's performance during the appraisal period on each element.

## SECTION 5

- A. When the Agency creates a new performance plan for employees, the Union may make recommendations and present supporting evidence pertaining thereto. The Employer will consider the Union's recommendations and advise the Union, in writing, of the results of its review no later than three (3) workdays prior to implementation.
- B. The supervisor and employee should discuss goals and work expectations for the rating period. Discussions may cover the employee's official duties and responsibilities; organizational goals and objectives; and, the employee's goal for the future. Additionally, these discussions will include an identification of cascading goals for which the employee is also responsible. In developing performance plans for a given position, the Employer agrees to consider the views of the employees who occupy the position. Consistent with Section 5D below, prior to implementing a new or revised performance plan, the Employer will provide employees whose performance will be assessed under it with a draft of the new or revised plan, identifying all new or revised portions of that plan and informing the employees that they should read the new or revised plan and submit any comments they wish to make to their supervisors. The supervisor will consider the views of the employee, when such views are presented, before implementing the performance plan.
- C. The performance plan will be given to the employee normally within thirty (30) days after the beginning of the rating period. Employees will be given five (5) workdays to submit written or oral comments on any proposed performance plan applicable to them. Reasonable requests for extensions will normally be granted. Before comments are due, an employee may request to meet on duty time with a Union representative to discuss the proposed changes in his/her performance plan. The Employer agrees to consider the written comment(s) of an employee before finalizing a new or revised

performance plan. If the employee declines to sign, the effective date of the plan is the date the rating official attempted to obtain the employee's signature. The supervisor will note this on the plan, citing the date the employee was given a copy of the established plan.

- D. The employee's signature means that the supervisor has communicated the performance plan to the employee. It does not mean that the employee agrees with the plan.
- E. The supervisor is responsible for providing information about the performance plan and his/her expectations to help the employee understand the requirements of the plan. The employee is responsible for ensuring that he/she has a clear understanding of the supervisor's expectations and the standards against which performance will be measured. The employee should request clarification from the supervisor when needed.
- F. An employee will not be held accountable for his/her performance plan until the employee receives them.
- G. Established performance standards will be measured against observable employee performance.
- H. The Employer will consider extenuating circumstances outside the control of the employee, when applying performance standards against employee performance.
- I. The Employer will consider such factors as availability of resources, lack of training, or frequent authorized interruptions of normal work duties.
- J. The Employer shall not establish any quota system for appraisals.
- K. Annual ratings/annual ratings of record when used will reflect the employee's performance for the full annual appraisal period unless the information necessary to make such an appraisal is not available. Ratings for periods of time which are less than the full annual appraisal period will be so noted.
- L. An employee's signature on a performance appraisal indicates only that the performance appraisal has been received, not an employee's agreement with the performance appraisal.
- M. Authorized time spent performing collateral duties and/or Union representational functions will not be considered as a negative factor when evaluating any critical job elements. For example, if a Union representative has spent 30% of a work period on official time, annual leave, LWOP or performing Union duties, this fact will be considered in the application of expected performance standards.

- N. When evaluating performance, it is important to communicate to employees all changes in working procedures before they can be charged with errors or held accountable.
- O. The fact that an employee assumes new tasks, receives new critical job elements, changes positions, is a trainee, and/or gets promoted to a new position does not create a presumption that his or her performance is only fully successful (Achieved Expected Results)

## SECTION 6

### A. Elements

1. A performance evaluation plan shall contain two (2), and generally no more than six (6) elements. The Employer has determined that all elements are critical and define what is important in the job.
2. If team elements are used, employees shall be rated for their individual contributions to the success of the team.
3. If deletions are made for any reason to an individual employee's critical job elements, performance standards, or the elements or areas that comprise the critical job elements, the affected employee(s) will be promptly notified.
4. If the Employer changes any of the aspects (for example, any addition, removal or alteration of a performance aspect or measure) of a critical job element requirement, it will serve notice on AFGE of such a change and bargain to the extent required by law.

### B. Performance Standards

1. Performance standards define what is successful performance on the element. The PMAP performance plan identifies performance measures at each of the 5 ratings levels. (See example PMAP performance plan attached as Appendix 5 of this agreement).
2. To the extent possible standards should be:
  - Objective. Free from personal feelings or opinions that might bias the rating of actual performance;
  - Explicit. Clearly written and free from ambiguities;
  - Observable or measurable. Specify discernable conditions, characteristics, and allow for differentiating between levels of performance; and
  - Attainable. Goals or results/outcomes must be achievable and realistic. Measures shall be neither too easy not too difficult but instead state what's normally expected in order for the job element to be successfully met.

## SECTION 7

A. Progress Reviews

1. The rating official shall provide communication regarding the employee's achievement of goals and objectives throughout the rating period. Formal face to face conversations are one way this communication can occur. Communication may include such things as comments on written products the employee has submitted, e-mail comments regarding assignments, suggestions concerning better ways of conducting business, etc. Such feedback coupled with the regular mid-year progress review discussion will be sufficient for most employees to understand expectations and measure progress toward meeting these expectations. However, if performance is below the fully successful level, additional steps, including written documentation and meetings, should be taken to provide feedback.
2. The process of monitoring performance is ongoing. However, when the supervisor notices performance at lower than a fully successful level, the Employer will counsel employees in relation to their overall performance rating on an as needed basis. Such counseling will normally take place when a supervisor notices a decrease in performance and include advice or recommendations on better communicating job requirements, identifying and providing supplemental training, and providing additional coaching, monitoring, mentoring, and other developmental activities, as appropriate, to help improve employee performance until the employee shows improvement.
3. The supervisor of the employee may initiate discussions to provide feedback concerning performance. Each discussion should be candid and forthright and aimed at identifying performance strengths and weakness; barriers to success; methods for improving performance; training needed; etc.
4. The rating official shall conduct at least one (1) documented progress review discussion in person between the establishment of the performance and the end of the rating period (generally mid-year). During any progress review, the rating official and employee may discuss the:
  - Employee's accomplishments;
  - Performance standards remaining to be accomplished and any barriers that may impede their accomplishment;
  - Revisions to the plan which may reflect changes in work assignments or program initiatives, deficiencies in performance and required improvements; and
  - Training and developmental needs.
5. During the mid-year progress review discussion, the supervisor may identify aspects or factors within each element or performance measures that the employee should focus improvements efforts on during the remaining time in the rating period. These aspects may be marked on the form for emphasis or identification purposes.
6. A written narrative is not required in connection with the progress review unless performance is less than Achieve Expected Results. However, where performance has declined, the supervisor will provide written feedback when requested. If a written

narrative is prepared, a copy will be furnished to the employee. The supervisor and the employee will sign and retain a copy of the progress review documentation. If the employee declines to sign and date the form, the supervisor shall note that the employee declined to sign, citing the date the employee was given a copy.

#### B. Modifying Performance Plans

1. Performance elements and measures may be changed as necessary during the rating period. Changes to the original performance plan shall be initialed and dated by the rating official and the employee, and a copy provided to the employee.
2. If a plan is revised to include new performance elements and/or measures, changes shall become effective at the time they are given to the employee. An employee may not be rated on a new element or performance standard or any major revisions to an existing element or performance standard that has been in effect less than ninety (90) days.

### SECTION 8

#### A. Element Ratings

1. If a plan is revised to include new performance elements and/or measures, changes shall become effective at the time they are given to the employee. An employee may not be rated on a new element or performance standard or any major revisions to an existing element or performance standard that has been in effect less than ninety (90) days.
2. There are five (5) levels for rating performance on each element:

##### **Level 5: Achieved Outstanding Results (AO) – 5 POINTS**

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

- Innovations, improvements, and contributions to management, administrative, technical, or other functional areas that have influence outside the work unit;
- Increases office and/or individual productivity;
- Improved customer, stakeholder, and/or employee satisfaction, resulting in positive evaluations, accolades, and recognition; methodology is modeled outside the organization;

- Easily adapts when responding to changing priorities, unanticipated resource shortages, or other obstacles;
- Initiates significant collaborations, alliances, and coalitions;
- Leads workgroups or teams, such as those that design or influence improvements in program policies, processes, or other key activities;
- Anticipates the need for, and identifies, professional developmental activities that prepare staff and/or oneself to meet future workforce challenges; and/or
- Consistently demonstrates the highest level of ethics, integrity and accountability in achieving specific HHS, OPDIV/STAFFDIV, or programs goals; makes recommendations that foster clarification and/or influence improvements in ethics activities.

#### **Level 4: Achieved More than Expected Results (AM) – 4 POINTS**

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

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

#### **Level 3: Achieved Expected Results (AE) – 3 POINTS**

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

- Acquires new skills and knowledge to meet assignment requirements;
- Demonstrates ethics, integrity and accountability to achieve HHS and agency goals;

- and
- Resolves operational challenges and problems without assistance from higher-level staff.

## **Level 2: Partially Achieved Expected Results (PA) – 2 POINTS**

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

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

## **Level 1: Achieved Unsatisfactory Results (UR) – 1 POINT**

*Undeniably unacceptable performance; consistently does not meet Level 3 (AE) performance requirements.* Repeat observations of performance indicate negative consequences in key outcomes (e.g., quality, timeliness, results, customer satisfaction, etc.), as described in the annual performance plan. The employee fails to meet expectations. Immediate improvement is essential for job retention. Examples include:

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

NR (Not Rate-able): performance of the duties/responsibilities reflected by the critical job elements and standards has not been observed.

B. 1 The Employer has determined that the following method shall be used to translate the composite element rating into a final rating:

## **Level 5: Achieved Outstanding Results (AO): 4.50 TO 5.00 POINTS**

**Level 4: Achieved More than Expected Results (AM): 3.60 TO 4.49 POINTS**

**Level 3: Achieved Expected Results (AE): 3.00 TO 3.59 POINTS**

**Level 2: Partially Achieved Expected Results (PA): 2.00 TO 2.99 POINTS**

**Level 1: Achieved Unsatisfactory Results (UR): 1.00 TO 1.99 POINTS**

2 Final ratings shall be derived after rating and assigning a score to each critical element, the rating official will total the points and divide by the number of critical elements, to arrive at an average score (up to two decimal places). This score will be converted to a summary rating. Employer-determined exceptions to the mathematical formula are outlined in the PMAP document.

3 When the employee's final rating is below "Achieved Expected Results", the rating official shall prepare a written explanation describing the specific areas in which the employee failed. Upon request, when an employee's final rating has declined, the supervisor will prepare a written explanation describing the specific areas in which the employee's performance has declined.

4 When an employee's supervisor has determined that a rating of "Achieved Unsatisfactory Results" (UR) may be issued to an employee, the supervisor shall first discuss the proposed rating with the employee. The employee will be given an opportunity to respond to the rating in writing. The supervisor shall provide the appraisal, the appropriate documentation and any written response prepared by the employee for a second level review. If the second level review establishes that a rating of UR is appropriate, the final rating of UR will be prepared. A second-level review is required for all UR ratings.

5 The final rating shall be discussed with the employee. The final rating shall be in writing, or otherwise recorded, and given to the employee as soon as possible after the end of the rating (normally within thirty (30) days).

6 Employees who wish to comment on their final rating may record their comments on the appraisal form or as an attachment to it. Such comments will be attached to and become part of the appraisal.

7 Employees will be provided with a reasonable amount of administrative time, not to exceed four (4) hours, to prepare written comments concerning any performance appraisal that becomes the employee's annual rating of record. Such comments will be attached to and become part of the appraisal. Failure to rebut does not indicate employee agreement with the appraisal. Similarly, failure by the supervisor to comment on the employee's rebuttal does not indicate agreement with the employee's comments. It is not necessary or appropriate for a supervisor to prepare additional remarks regarding the employee's comments in that the appraisal constitutes management's stated position.

8 An employee, who disagrees with his/her numerical score and wishes to file a grievance, may do so in accordance the negotiated grievance procedure in Article 38, Grievance Procedure.



## SECTION 9

A. Employee Not Under a Plan for at Least 90 days. An employee is considered to be ratable if he/she has performed under a plan for at least ninety (90) days during the rating period. If a final rating cannot be prepared at the end of the annual rating period because the employee has not been under a plan for at least ninety (90) days, the rating period shall be extended until ninety (90) day period is reached. A final rating shall be prepared as soon as possible after ninety (90) days is reach, normally within thirty (30) days.

B. Permanent Position Changes. If an employee permanently changes positions during the rating period, and has performed under a plan for at least ninety (90) days in the previous position, the employee's rating official must prepare a rating appraising the employee's performance to date in the previous position. This rating will be provided to the new rating official who will take the rating into consideration in deriving the final rating for the annual rating period.

C. Details/Temporary Promotions. When an employee is temporarily detailed or receives a temporary promotion to a position with the Employer for one hundred twenty (120) days or more, the gaining supervisor shall prepare a performance plan describing the critical elements of the temporary job and prepare a rating of the employee's performance during the temporary work assignment. This rating will be provided to the supervisor of record upon the employee's return to the original position, and will be considered by the rating official when developing the employee's final rating for the annual rating period.

D. Temporary Assignments Outside the Agency. The rating official will make a reasonable attempt to obtain a performance assessment for any temporary work assignment by an employee performed outside the Agency. At a minimum, the rating official will contact the temporary duty supervisor and request a memorandum describing the assignments performed by the employee and an assessment of how well the employee performed the assignments. If definitive information is obtained, the rating official will consider it in developing the final rating for the annual rating period.

E. Supervisory Changes. Whenever a supervisor leaves his/her position, he/she shall provide a written assessment about his/her employee's performance, up to the time of the change, so that the gaining supervisor will have information to consider when preparing a final rating at the end of the annual rating period, and so that the employee will be properly credited for work accomplished during the entire rating period.

## SECTION 10

When an employee moves to a different organization within the Employer or to a Federal agency outside the Employer at any time during the Employer's rating period, the most recent performance ratings of record must be transferred as required in 5 CFR Part 293, including

the rating that must be prepared at the time of the position change. If the performance plan was in effect for at least ninety (90) days.

#### SECTION 11

After a rating of record is issued, any form which identifies job elements, the performance standards for those elements, along with any changes, including appraisal information on those elements, shall be retained for four (4) years in the Employee Performance File (EPF) system established for employees covered by this program.

#### SECTION 12

- A. During the final thirty (30) days of an employee's annual appraisal period (or as otherwise agreed upon), the employee may prepare a written self-assessment.
- B. An employee who prepares such assessment shall be granted a reasonable amount of administrative time, not to exceed four (4) hours to do so, and shall submit that self-assessment to his or her immediate supervisor by no later than the last workday of his or her annual appraisal cycle.

#### SECTION 13

The annual performance appraisal provides invaluable information to supervisors regarding an employee's need for additional training or coaching, and provides the employee with realistic feedback on how well he or she has performed during the rating cycle, as compared to the critical job elements for his or her position. Because of the importance of the annual appraisal, any disagreement between the supervisor and the employee over its content should be resolved in an expedited manner that encourages open and constructive dialogue regarding the supervisor's performance expectations, the employee's performance, and the appraisal itself.

#### SECTION 14

The Employer agrees to furnish AFGE, Local 3553 an electronic data file, to the extent that it is available, containing bargaining unit employees represented by the local subject to the new PMAP: an employee's summary rating score, location, grade/series, any RNOGAD data, and any awards/QSIs. The information will be provided no later than March 31 each year.

SECTION 15 The Union and the Agency may jointly develop a training program through a joint labor management team to train employees on Articles 30 and 27. The team shall have an equal number of labor/management individuals.

## **ARTICLE 25**

### **IMPROVING PERFORMANCE**

#### **SECTION 1**

“Unacceptable performance” is defined as performance by an employee that fails to meet one or more critical job elements of her/his performance plan. The term “unacceptable performance” is synonymous with “unsatisfactory performance.”

#### **SECTION 2**

This Article applies to all employees who have completed the applicable probationary or trial period, as appropriate, in their current positions. However, only those excepted service employees with appeal rights conferred by 5 C.F.R. Part 432 may appeal or grieve an action taken under this Article.

#### **SECTION 3**

For purposes of this Agreement, actions based on unacceptable performance are removal or reduction-in-grade pursuant to 5 U.S.C. 4303. Under certain circumstances, however, reasons may exist for imposing another penalty or utilizing a different procedure to accomplish the Employer's goal of effectively dealing with the unacceptable performance. For example, if one of the following conditions applies, adverse action procedures under 5 U.S.C. Chapter 75 may be used:

- A. when the employee is not covered by 5 C.F.R. Part 432 regulations;
- B. when the Employer feels that a suspension action rather than a removal or reduction-in-grade is warranted;
- C. when safety, health, monetary, or other significant considerations make the provision to the employee of the 5 U.S.C. 4302(b)(6) "opportunity to demonstrate acceptable performance" an overly risky or otherwise ill-advised step;
- D. when other 5 U.S.C. Chapter 43 requirements cannot be met given the circumstances, such as when the employee is without updated performance elements and standards due to management turnover, being on detail, or Employer development of new evaluation techniques;
- E. when serious performance deficiencies are not covered by the employee's performance elements and standards; or
- F. when the Employer wishes to include in the charges instances of inadequate performance which occurred prior to the one (1) year period before issuance of the proposal notice.

G. negligence in the performance of duty.

#### SECTION 4

The Employer will act in as fair and objective a manner as feasible, giving particular attention to avoiding disparate treatment of employees, when taking actions based on unacceptable performance.

#### SECTION 5

The Employer will not take an action against an employee that relies on a performance plan that the employee has not worked under for at least the minimum rating period, or where performance expectations have not been communicated to the employee consistent with the requirements of law and the terms of this Agreement.

#### SECTION 6

- A. Prior to initiating an action based upon unacceptable performance under 4 U.S.C. 4303, the Employer will give the employee a written notice (usually called a performance improvement plan, or PIP), which will:
  - 1. specify the work areas in which the employee's performance is unacceptable, including the applicable critical element(s) and standards;
  - 2. provide specific examples of how the employee's performance does not meet the requisite standards;
  - 3. specify ways in which the employee must improve performance to meet the requisite standards;
  - 4. specify the amount of time (e.g. forty-five [45]) that the employee has to improve performance to a level above unacceptable; and
  - 5. inform the employee that failure to improve performance to a level above unacceptable "Achieve Unsuccessful Results"(UR) and sustain it at that level in the time period specified may result in the employee being reduced in grade or removed.
- B. The Employer will provide more extensive assistance and feedback to an employee undergoing a PIP in an effort to secure the attainment of the requisite level of improved performance during the time period designated for the reasonable opportunity to improve.
- C. PIPs are not grievable.

## SECTION 7

- A. Once an employee has been afforded a reasonable opportunity to demonstrate acceptable performance, the Employer may propose a reduction in grade or removal action if the employee's performance during or following the reasonable opportunity to improve period is UR in one or more of the critical elements for which the employee was afforded an opportunity to demonstrate acceptable performance.
- B. When a performance-based action is being taken, the Employer will give the employee a written notice at least thirty (30) days in advance of the proposed effective date of the removal or reduction in grade.
- C. This advance notice letter will summarize the counseling which has been provided to the employee during the period in which s/he has been given the opportunity to demonstrate improved performance. It also will identify:
  - 1. the action being proposed;
  - 2. the critical element(s) on which s/he allegedly has performed in an unacceptable (UR) manner;
  - 3. the specific instance(s) of unacceptable (UR) performance by the employee;
  - 4. that s/he is entitled to be represented;
  - 5. the right to reply to the proposal orally and/or in writing in accordance with Section 9 of this Article;
  - 6. that s/he may have a reasonable amount of duty time to prepare and present a reply;
  - 7. the name of the official to whom the reply must be made; and
  - 8. that the final decision on the proposed reduction in grade or removal will be made no sooner than thirty (30) calendar days after receipt of the notice.
- D. If the employee elects to have a representative, s/he must inform the deciding official, in writing, of the representative's name.
- E. The Employer, in preparing the notice of proposed action under 5 U.S.C. 4303, will not rely on employee performance which occurred more than one (1) calendar year prior to the date on which the employee received the advance notice letter.

## SECTION 8

The Employer will make available for review, a copy of the material relied upon for the proposed action, subsequent to the advance notice being delivered to the employee. If requested by the employee or her/his representative, the Employer will furnish a copy of such material.

## SECTION 9

- A. If the employee wishes to make an oral and/or written reply, the reply will be provided within fifteen (15) days after receiving the advance notice. Any request to reply orally must be made within the first seven (7) days after the employee receives the advance notice of proposed action. The oral and/or written reply will be made to the official specified in the advance notice.
- B. Reasonable requests for one extension to submit or deliver a reply will be granted. Any additional extension request(s) to respond to an advance notice must be supported by substantial good cause and are in the Employer's sole discretion to approve or deny.
- C. If an employee chooses to make an oral reply, such reply will be made at the worksite of the employee if both s/he and the deciding official work in the same location. When the employee and deciding official are not in the same location, an oral reply will be delivered by audio- or video-conference, as circumstances permit, unless otherwise determined by the Employer for purposes of that case only.
- D. The Employer will provide a written summary of the employee's oral reply. A copy of the summary will be included in the material relied upon, and it will also be provided to the employee's representative (or to the employee if s/he is unrepresented). Within five (5) workdays after receiving the written summary, the employee or representative may submit comments to it. The comments will be added to the official record and will be considered by the Employer before a final decision on the matter is rendered.

## SECTION 10

- A. The Employer should issue its final decision within thirty (30) days after the expiration of the advance notice period. The final decision will be made by, or concurred on by, a higher-level official than the person who proposed the action. If the proposing official is the head of the DNHDP, the final decision/concurrence will be made by an appropriate official identified by the Employer.
- B. The Employer agrees that any final decision to take action to remove or reduce an employee in grade based on unacceptable performance will include reliance on evidence of performance during the performance improvement period.
- C. In reaching a final decision, the Employer may not rely on any performance which the employee has not been given the opportunity to reply to either orally or in writing.

D. In the event the Employer sustains the charge(s) and effects a reduction in grade or removal, the employee may elect to challenge the adverse action in only *one* of the following ways:

1. an appeal to the Merit System Protection Board (MSPB) in accordance with applicable law and regulation;
2. under this Agreement, going directly to Arbitration (which may include an allegation of discrimination), with the Union's concurrence; or
3. a formal complaint of discrimination filed under the administrative EEO process.

The final decision letter will contain a statement of her/his right to challenge the action in one of these three ways. Once an employee has elected one of these procedures, s/he may not change thereafter to a different procedure.

## SECTION 11

When an employee requests a change to lower grade due to her/his inability to perform the duties of the current position, the Employer will consider placing the employee in a lower-graded position identified by the Employer which the supervisor believes that the employee can successfully perform provided that such positions are vacant and available to be filled.

## SECTION 12

If, during the time designated in the PIP as the reasonable opportunity to improve period, the employee whose performance was "UR" improves to the requisite level stated in the notice, no removal or reduction in grade will be undertaken at that time. If the employee's performance again becomes "UR" within one (1) year from the advance notice period, no further opportunity to improve need be given before the Employer initiates a proposal to remove or reduce in grade.

## **ARTICLE 26**

### **AWARDS**

#### **SECTION 1 – General Provisions**

- A. All awards programs of the Employer shall be administered in a fair and equitable manner, and in accordance with applicable law, regulation, policy, and this Agreement. Awards will be based on merit.
- B. The Union will be given timely advance notification, an invitation to attend and an opportunity to participate at any OpDiv level and other sub-organizational level award ceremonies where DNHDP bargaining unit employee are recognized.
- C. The parties acknowledge that monetary awards are contingent upon the availability of funds.
- D. Awards and recognition should be given as close in time as possible to the achievement being recognized.
- E. All employees who met eligibility requirements may receive awards, including QSIs.
- F. The Agency shall establish awards pools at the appropriate level(s) for the DNHDP bargaining unit employees. Once the award pool(s) are established, the Employer will notify the Union. By December 31 of each year, the Employer will notify AFGE of where the awards pools will be for the appropriate rating cycles.
- G. The awards unit pools will be based upon a percentage of bargaining unit salaries as of the beginning of the fiscal year. The percentage of salary for the bargaining unit awards pool will be the same percentage as used for the non-bargaining unit awards pool.

#### **SECTION 2 - Performance Awards Program**

- A. Performance awards will be based upon the employee's overall final rating of record.
  - 1. Employees whose summary rating is Achieved Outstanding Results (AO) will receive a performance award payment up to 5% of salary, including locality payment or special rate supplement (as of the last day of the rating period). The specific percentage of salary will be determined on an award pool basis.
  - 2. Employees whose performance is Achieved More Than Expected



Results (AM) may be eligible for a performance award, at the discretion of the Employer, of up to 4% of salary, including locality payment or special rate supplement (as of the last day of the rating period). The specific percentage of salary will be determined on a pool- by-pool basis.

3. Employees whose performance is Achieved Expected Results (AE) may be eligible for a performance award, at the discretion of the Employer, of up to 3% of salary, including locality payment or special rate supplement (as of the last day of the rating period). The specific percentage of salary will be determined on a pool-by- pool basis.

B. Employees may request to convert the cash award amount into time-off equivalent, not to exceed an aggregate calendar year total of 40 hours time off. Any remaining balance will be paid out in cash.

C. Employees will not receive both a QSI and a cash award for the same performance.

D. Employees who receive an Achieve Outstanding Results (AO) rating may be eligible for a QSI.

### SECTION 3 - Incentive Awards Programs

A. The Incentive Awards program covers superior accomplishment awards for special acts or services, length of service recognitions, and a variety of non-cash honor awards.

B. Incentive awards (including Special Act, Time-off Award, etc) are appropriate to recognize contributions to the quality, efficiency or economy of government operations. Examples include, but are not limited to:

- non-recurring contribution either within or outside of job responsibilities;
- scientific achievement;
- act of heroism;
- high quality contribution involving a difficult or important project or assignment;
- special initiative and skill in completing an assignment or project before the deadline;
- initiative and creativity in making improvements in a product, activity, program, service; or current practice and
- ensuring the mission of the unit is accomplished during a difficult period by successfully completing additional work or a project assignment while maintaining the employee's own workload;
- contribution to the well being of the community (non-monetary);
- performance that contributes to protecting and promoting the health of the American people
- influencing/guiding others toward achieving organizational goals; and
- advancement of team goals toward HHS mission; supporting team and

- individual team members; supporting organizational units; and recognition of an employee or group's disclosure of fraud, waste or abuse resulting in tangible or intangible benefits to the government.

C. Annually, or more frequently as appropriate, the Employer will notify all employees, committees, and the Union, through Employee Bulletins or other appropriate forms, of incentive awards known to the Employer and for which the Employer has the authority to approve. Such notification will contain, when known to the Employer, either a brief explanation of the criteria involved or a reference to the written instruction containing such criteria.

D. The Employer agrees it will establish no quotas or predetermined distribution rates for the size and number of incentive awards.

E. The following criteria apply to special act or service awards:

1. The individual or group contribution must have been a one-time occurrence. It may be a single action or series of actions, performed either within or outside normal responsibilities. The determining factor in distinguishing what constitutes a special act or service is the one-time nature of the contribution itself. An aspect of the job can be recurring, but a special act or service award may be appropriate for a one-time special effort in performing that aspect of the job that would not otherwise be appropriately recognized through a performance award.
2. Normally, the period of performance for a special act or service award will not exceed 120 days.

F. Peers and supervisors may nominate employees or groups for incentive awards; Employees may nominate themselves for incentive awards. Nominators must submit their nominations to the local committee with jurisdiction over the nominee's organization.

G. Nominators may inform nominees that they have been nominated for an award. Nominators and/or individuals participating in the approval decision may not release or publicize any information about unapproved nominations to anyone other than the nominee.

H. Employees will be notified of the approval of any award, and may be issued a certificate.

#### SECTION 4 - Time Off Awards

A. Determinations to grant a time off award in excess of one (1) workday, shall be reviewed and approved by an official who is at a higher level than the official who made the initial decision. If the time off award was at the recommendation of a joint awards committee, a determination to grant a time off award in excess of one (1) workday shall be reviewed and approved by the appropriate official, consistent with § B below.

Approval will be based on reasonable and relevant criteria applied uniformly to all similarly situation employees.

B. In accordance with applicable regulations:

1. A time off award may not be converted to a cash payment.
  - (a) Full-time employees may not be granted more than 80 hours of time off during a single leave year.
  - (b) The maximum amount of time off during a single leave year for part-time employees or employees with an uncommon tour of duty is the average number of hours of work in the employee's biweekly scheduled tour of duty.
2.
  - (a) For full-time employees, time off awards are limited to a maximum of 40 hours for a single contribution.
  - (b) The maximum time off award for a single contribution for part-time employees or employees with an uncommon tour of duty is one-half the maximum amount of time that could be granted under Section 4C2(b) above.

## SECTION 5

A. Labor Management Award Committees

1. The Employer shall continue any existing local labor-management incentive awards committee(s). There will be an equal number of bargaining unit members and management representatives on each team. The local will appoint the BU members of the Committee. The Committee shall continue to operate under existing procedures. Any committee may modify their procedures at anytime.
2. The award pool will be divided between performance awards and incentive/suggestion awards. In no event will there be less than 15% of the funds from the established awards pool reserved for incentive/suggestion awards. The Committees may recommend a higher percentage to be reserved.
3. The Incentive Award Committee shall meet quarterly to make recommendations. Those bargaining unit employees on the committees will be released from duty, absent a workload disruption. Dates of Committee meetings will be scheduled in advance and notice will be provided to the Local President. If the Local President cannot appoint BU members in a timely manner, the award nominations will be referred to the deciding official without a committee recommendation. Meetings may be

rescheduled if

determined necessary by the deciding official.

B. Incentive Awards

1. Awards handled by the committees will be time off awards, suggestion awards, special act awards and informal recognition items.
2. With respect to incentive awards, the Committee will:
  - a. Make recommendations of the use or non-use of informal recognition items, type used, if appropriate, for this purpose;
  - b. Develop a process for submitting nominations for awards and recognition;
  - c. Develop a process for recommending which nominees receive awards and recognition (guidelines, criteria, forms, information, etc.);
  - d. Review nominations and recommend approval/disapproval of awards (with or without modification);
  - e. Recommend time off awards in lieu of cash if budget shortfall restricts use of monetary awards or any other legitimate, performance based reason;
3. The parties will develop a process that ensures that awards are granted as close in time as possible to the achievements being recognized and that all grantees receive a fair share of the awards funds.
4. The Committee will reach recommendations by consensus. If no consensus is reached regarding an award nomination, the final decision will be made by the individual with the award approving authority.
5. The official with award approval authority will consider the Committee's recommendations and accept, modify or reject them. If the recommendations are rejected or modified, the approving official will provide the Committee with her/his rationale in order to guide its future deliberations. The mere fact that the Deciding Official does not accept the committee's recommendation is not grievable unless it violates law, rule, regulation, or a matter covered in the CBA.
6. Employees may not receive more than one reward or recognition item for the same special act or service.
7. No Committee member may participate in the review and discussion of any nomination for which s/he is the nominator or nominee, or for which s/he has a familial or blood relationship or any other relationship that gives rise to a conflict of interest.
8. Strict confidentiality concerning nominations and deliberations must be

maintained by all Committee members and any other individuals who are privy to information on the nomination forms. This provision notwithstanding, nominators may, consistent with above, inform nominees that they have been nominated for an award.

9. Existing Committees with the current practice of signing off on incentive awards shall continue to have the authority to do so under this agreement.

#### C. Performance Awards

1. Labor-management performance awards committees shall be established at appropriate levels of the organizations (OPDIV, STAFFDIV, Office, etc.) Existing incentive awards committees may assume this function if the incentive awards committee determines it is in the best interests of the parties. Generally these committees are established at the awards pool level but may be established at a higher level (OPDIV/STAFFDIV). Nothing shall preclude the establishment of a higher level committee having overarching responsibility to oversee subordinate committees within an OPDIV/STAFFDIV. Each OPDIV/STAFFDIV shall have at least one performance awards committee.

The Agency shall inform the AFGE, Local President of the appropriate level for the performance award committee for DNHDP and their management representatives on each committee before December 31 of each year.

The AFGE Local President shall inform the Agency of who the Union representatives will be for each committee by January 15 of each year.

Each committee shall meet prior to January 31 of each year to discuss procedures which will be used to make their recommendation to the Deciding Official.

These committees shall:

a. be comprised of equal numbers of bargaining unit members and management representatives. Committees at the awards pool level shall not exceed three (3) members from each, the Union and Management. Higher level committees shall not exceed five (5) members from each, the Union and Management.

b. receive the aggregate performance scores and the awards budget for each awards pool no later than February 15 of each year.

c. meet at reasonable times to ensure recommendation are made in a timely manner.

- d. make recommendations to the Deciding Official no later than March 15 of each year.

With respect to performance awards, the Committees shall:

- a. base their recommendation on the aggregate final ratings for those employees within the Committee's jurisdiction and funds availability.
- b. recommend the percent payouts for each rating level on an annual basis for which an employee may be eligible an award, i.e., Achieved Outstanding Results, Achieved More than Expected Results and Achieved Expected Results.
- c. limit their recommendation to a rating level or a numerical score. For example, depending upon the specific circumstances, a committee may recommend that all employees receiving an overall rating of record of Achieved Outstanding Results be awarded up to 5% of salary, Achieved More than Expected Results be awarded up to 4% of salary and Achieved Expected Results be awarded up to 3%; OR may recommend that employees receive a gradation of amounts based on their actual composite rating, e.g. employees with 5.0 receive 5% of salary, 4.9 receive 4.9% of salary and so forth.

The Deciding Official shall:

- a. consider the committee's recommendation and make their his/her decision on award payout by March 31 of each year
- b. make his/her decision on awards payout by March 31 regardless of whether a timely recommendation was made by the committee. Failure of a committee to meet and/or make a timely recommendation shall not affect the Deciding Official's responsibility to make a decision by this date.

Performance awards will be paid out as soon as practicable.

- 2. The Committee's recommendation must award all Achieved Outstanding Results employees prior to awarding Achieved More than Expected Results and Achieved Expected Results employees.

## SECTION 6

- A. The Employer agrees to furnish to AFGE, Local 3553 an electronic data file, to the extent that it is available, containing each bargaining unit employee represented by AFGE: an employee's summary rating score, location grade/series, any Race, Nationality,

Origin, Gender, Age and Disability (RNOGAD) data, and any awards/QSIs. The Employer agrees to provide this data no later than May 30, 2012, for the appraisal year ending December 2011, for all employees represented by AFGE, Local 3553. Thereafter, the Employer will provide the data to AFGE, Local 3553, on an annual basis to the extent that it is available and requested by AFGE.

- B. The Employer agrees to provide to the local with a semi-annual listing of all employees who have received incentive awards and the kind of awards they received.
- C. The Employer agrees to provide the Union with other relevant and necessary data and information concerning awards, as requested.

**ARTICLE 27**  
**WITHIN GRADE INCREASES**

**SECTION 1**

- A. In accordance with 5 CFR and applicable law, a within grade increase (WIGI) will be granted by the Employer when the Employer determines that the employee's performance is at an acceptable level of competence. The level of competence determination will be based on the employee's latest rating of record and any performance that has occurred since the latest Rating of Record. Acceptable level of competence means an employee's last performance rating was "Achieved Expected Results", as defined in Article 30, Performance Management.
- B. The employee must also have completed the required waiting period for a within-grade increase. The waiting period is defined as:
  - 1. For steps two (2), three (3), and four (4) – 52 calendar weeks of creditable service;
  - 2. For steps five (5), six (6), and seven (7) – 104 calendar weeks of creditable service; and
  - 3. For steps eight (8), nine (9), and ten (10) – 156 calendar weeks of creditable service.

**SECTION 2**

- A. The performance management process, including any counseling, progress reviews and the latest performance rating, will be mechanisms for warning employees that their performance is not at an acceptable level of competence. The sole basis for an acceptable level of competence determination for purposes of this Article will be either the employee's most recent rating of record or a new rating of record prepared to reflect the employee's performance since the last rating
- B. When the Employer has determined that an employee's performance is below the acceptable level of competence, the employee will be provided with the following in writing within a reasonable period of time, but not less than 60 days before the employee will have completed the required waiting period:
  - 1. notice of the critical job element(s) in which the employee's work is less than Achieved Expected Results (AE);
  - 2. examples of less than fully successful (AE) performance on which the action is based;
  - 3. advice as to what the employee the employee must do to bring performance up to the acceptable level of competence;
  - 4. a statement that the employee's performance may be determined as being less than



Achieved Expected Results (AE) unless improvement to a AE level is shown and;

5. a statement that the within-grade increase will be withheld unless the employee's work is at an acceptable level of competence by the end of the waiting period.
- C. When the level of competency determination is negative and the discussion was held less than sixty (60) days prior to the WIGI due date, the WIGI will be denied. The reconsideration period will begin on the date the discussion referenced in Paragraph B above is held. At the end of sixty (60) days following the reconsideration period, a reconsideration determination will be made according to Section 5. The procedure in this section applies only to those situations where the discussion did not occur at least sixty (60) days prior to the WIGI due date. Nothing in this Section precludes the supervisor from beginning a PIP at the same time the level of competency determination is made.
  - D. Whenever a within-grade increase is withheld, the Employer will thereafter prepare a new rating of record for the employee and grant the WIGI when the employee has demonstrated performance at an acceptable level of competence for at least the minimum appraisal period of 90 days. At a minimum, this requires a determination of whether the employee's performance is at an acceptable level of competence after each 52 weeks following the original due date for the WIGI.

### SECTION 3

The Employer will give employees written notification of unacceptable level of competence performance determinations no later than ten (10) workdays after the end of the waiting period for the WIGI. The notice will:

- A. inform the employee that his/her performance has become unacceptable level of competence since the last rating of record and a new rating of record has been prepared and is included with the notification;
- B. inform the employee about the negative determination and withholding of the WIGI, including specific instances of performance that support the determination;
- C. state how the employee must improve his or her performance in order to receive a WIGI;
- D. inform the employee about his or her right to request reconsideration and identify the reconsideration official; and
- E. state the employee's right to Union representation while preparing for and presenting any request for reconsideration.

### SECTION 4

When an employee chooses to make an oral presentation in connection with a request for reconsideration, this oral presentation will be held at a particular site, video conference, or telephonically, as determined by the reconsideration official. Upon request by either party,

the Employer will arrange for a reporting service to transcribe the employee's oral presentation and a copy of the official transcript will be provided to the employee, if requested. The requesting party will pay the cost. The employee and the Union will be given at least 5 workdays to comment. The Employer will consider the Union's comments before reaching its final determination. The reconsideration official will issue his or her decision as soon as possible, but in no case later than 10 work days following receipt of the Union's comments.

## SECTION 5

- A. When an employee receives a negative determination, he or she shall be granted a reasonable amount of duty time to review the material relied upon to make the determination (if otherwise in a pay status), prepare a request for reconsideration, and present the request.
- B. If, based on the reconsideration, a negative determination is reversed by the Employer, the effective date of the increase will be the original due date.
- C. Where an employee is denied a WIGI by the reconsideration official, the letter transmitting the official's decision shall include a statement which informs the employee about his or her right to appeal the decision to binding arbitration (with Union concurrence), as provided in Article 39, Arbitration, of this Agreement, and the number of days in which the employee must request such an appeal through the Union.

## **ARTICLE 28**

### **POSITION CLASSIFICATION**

#### **SECTION 1**

- A. Each employee in the unit normally will be provided with a description of his/her duties and responsibilities in the form of a current official position description (or comparable description of responsibilities) within thirty (30) days of entrance on duty. Position descriptions normally will contain only a listing of duties necessary to determine proper classification of work. The position description may also be used to identify training, qualifications, and performance requirements of the position. Employees are encouraged to discuss the contents of the official position description with their supervisor. When significant changes in the duties and responsibilities warrant, the position description may be amended or rewritten to provide a current description of the work performed.
- B. Supervisors may revise position descriptions to ensure that they accurately reflect current duties of the position. Determination of the content of position descriptions remains in the discretion of the Employer.
- C. The Employer retains the right to determine technology, including the use of automated classification systems. If a change in automated classification systems, however, affects working conditions, the Employer will notify AFGE prior to effecting the change and bargain, as requested, in accordance with this Agreement, law, rule and regulation.

#### **SECTION 2**

An employee who believes that his or her position description is inaccurate or incomplete or that the official title, series, or grade of the position is incorrect should discuss this concern with their immediate supervisor. If, after the discussion, the employee desires that his or her title, series, or grade be reconsidered, he or she may take the following action:

- A. Request reconsideration of the title, series, or grade, by submitting a written reconsideration request to the appropriate operating human resources office, with a copy to his or her supervisor. If the employee is not satisfied with this reconsideration, he or she may appeal according to Paragraph B or C below;
- B. Formally appeal the title, series, or grade to the Office of Human Resources or its successor. The appeal should discuss the specific aspects of the position that the employee thinks were either misunderstood or not considered adequately. It should also include copies of the current classified Position Description, the Evaluation Report, and a current staffing chart. The Position Description submitted should be the one on which the evaluation is based. A classification decision from the Classification Services Staff will constitute the final classification decision within the Department of Health and Human Services. If the employee does not agree with this decision, he or she may appeal directly to the Office of Personnel Management (OPM) as described in Paragraph C below;

- C. Appeal the title, series, or grade directly to OPM following the procedures in 5 CFR 511. If the employee is not satisfied with OPM's decision, he or she has no subsequent appeal rights within the Federal Government. The OPM classification decision constitutes the final decision within the Federal Government and is binding on the Agency regardless of the favorableness of the determination.

### SECTION 3

When the Department or OPM affords the Employer the opportunity to review and comment on proposed position classification standards, the Union will be provided a copy and given the opportunity to comment. The Union's comments will be identified separately and forwarded with those of the Employer. If the Union's comments are not received in the time frames identified by the Employer, its comments will be forwarded separately.

### SECTION 4

The Employer agrees to provide to AFGE copies of newly created position descriptions where changes are effected that significantly alter the employee's current duties. The Employer agrees to provide these copies within 30 days of the final classification of the position description(s). The Union may submit comments/recommendations on the position descriptions within fourteen (14) calendar days after receipt. The Employer will consider the Union's comments/recommendations and, upon request, provide the results of the review. Nothing in this Article shall affect the Employer's right to assign work and set deadlines for the accomplishment of work.

### SECTION 5

The phrase "duties as assigned" in position descriptions is meant to include tasks of an incidental or infrequent nature which are impractical to include in the narrative portion of the position description.

### SECTION 6

Within 15 work days of receiving a request for an internal HHS position review (desk audit), the servicing Office of Human Resources (OHR) will begin the review process. Within 90 days of receipt of the request, the HRC will complete the review process (including the issuance of a written evaluation statement). During any desk audit, the employee shall have the right to be accompanied by a Union representative as a silent observer. Any written evaluation statement prepared by the Employer as a result of a desk audit shall be furnished to the employee prior to the adjudication of the classification appeal. The employee shall have the right to make written comments within five (5) work days after receipt of the evaluation statement, which shall be attached and forwarded with the written evaluation statement. The Employer's determination may, depending upon the issue, be subject to an optional appeal process provided by OPM and outlined in Section 2 above.

### SECTION 7

The Employer, upon request, agrees to provide the Union access to and copies of written

classification standards and qualification standards which the Employer maintains, if they are not otherwise available on the OPM website or other publicly accessible websites that display Federal personnel material.

## SECTION 8

The Employer agrees to inform the Union within fourteen (14) calendar days when significant changes will be made in the duties and responsibilities of positions held by employees due to reorganization or when changes in position classification standards result in changes in title, series or grade.

## **ARTICLE 29**

### **MERIT PROMOTIONS**

#### **SECTION 1**

It is agreed that all promotions to bargaining unit positions, and all other personnel actions set forth in Section 2 below, will be made using systematic and equitable procedures on the basis of merit and from among properly ranked and certified candidates or from other appropriate sources without regard to race, color, sex, national origin, marital status, age, religion, sexual orientation, labor organization affiliation or non-affiliation, or non-disqualifying physical handicap.

#### **SECTION 2**

- A. When merit promotion procedures are to be used, it is understood that this Article applies to all promotion actions to bargaining unit positions not specifically excluded in Section 2.B. below. Examples of personnel actions covered are:
1. Filling a position by promotion;
  2. Temporary promotions in excess of 120 days;
  3. Reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in the competitive service;
  4. Transfer to a higher-graded position or a position with known promotion potential ("a position with known promotion potential" is one in which the Employer may make promotions, without further competition, to the highest grade in the career ladder);
  5. Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service;
  6. Selection for training which employees are required to take before they may become eligible for promotion to a specific higher-graded position; and
  7. Selection for a detail to a higher grade for more than 120 days.
- B. The competitive procedures set forth in this Article will not apply to the following:
1. A temporary promotion for 120 days or less;
  2. A detail to a higher-graded position or one with known promotion potential for 120 days or less;

3. Promotion resulting from upgrading of a position without significant change in duties and responsibilities due to issuance of a new classification or the correction of a classification error;
4. A position change permitted by reduction-in-force regulations;
5. Promotion within a career ladder or from a trainee position for which competition was held at an earlier date;
6. Promotion of the incumbent of a position that is reclassified at a higher grade due to the accretion of additional duties and responsibilities;
7. A career ladder promotion following the non-competitive conversion of a student participating in the Student Career Experience Program;
8. Promotion, through exercise of his/her priority consideration right, of a candidate who was not given proper consideration in a prior competitive promotion action;
9. Reassignment, demotion, reinstatement or transfer to a position having no higher promotion potential than the potential of the position the employee currently holds or previously held on a non-temporary basis;
10. Promotion of an employee to a grade previously held on a permanent basis, provided that the employee was not demoted or removed for personal cause; and
11. Selection from the re-employment priority list;

### SECTION 3

- A. In the initial search for qualified applicants, the minimum area for consideration will be sufficiently broad enough to ensure the availability of high quality candidates, taking into account the nature and level of the position being announced.
- B. The area of consideration may be restricted where circumstances necessitate the selection from a particular organizational element within the unit due to budgetary, staffing, or other constraints.

### SECTION 4

- A. All positions which are filled through the competitive promotion procedures of this Article will be publicized through vacancy announcements issued under the authority of the servicing Human Resources Center (SHRC). All vacancy announcements, depending upon the area of consideration, will be posted on the servicing Intranet and the Internet at (<http://www.usajobs.opm.gov>) via mandatory posting of vacancies through the Office of Personnel Management (OPM) Federal Job Opportunities Bulletin (FJOB). A copy of any announcement may be obtained by contacting the servicing OHR. Employees will also have the option of being notified by email of future vacancies posted through the automatic staffing system.

- B. Vacancy announcements will be open for a minimum of ten (10) workdays for bargaining unit positions which must be filled in accordance with the competitive procedures covered in this Article.
- C. At a minimum, every vacancy announcement will contain:
  - 1. Announcement number;
  - 2. Opening and closing dates;
  - 3. Position title, series, grade, and the number of positions to be filled;
  - 4. Organizational and geographic location;
  - 5. Any known promotion/career-ladder potential;
  - 6. Applicable area of consideration;
  - 7. Summary of major duties, including an estimate of the amount of travel, if applicable;
  - 8. Summary of minimum qualification standards to be applied; along with any selective placement factors;
  - 9. Evaluation methods and criteria to the extent appropriate;
  - 10. Procedures for applying; and
  - 11. Statement of equal employment opportunity; and bargaining unit status.

## SECTION 5

- A. Employees who wish to be considered for a posted vacancy must apply by submitting:
  - 1. Information and/or documents required in the vacancy announcement, and
  - 2. Their most recent performance rating of record. (The required “rating of record”) is the most recent annual performance appraisal issued to the employee, whether or not he/she is in the process of challenging the rating through a grievance, EEO complaint, or similar process. Employees are required to submit only the summary page of the performance evaluation form indicating the final rating. At their option, they may submit the entire plan.
- B. To be considered for a vacancy, candidates must submit all required application material in such a way that the information provided is complete, accurate, legible, and timely. The automated staffing system will send an email confirming receipt of an employee’s application.
- C. In order to be considered under the automated staffing system, applicants must transmit



an electronic application via the automated staffing system website before midnight Eastern Standard Time (i.e., by 11:59 P.M. Eastern Standard Time) on the closing date stated in the vacancy announcement. All supplemental materials (e.g., sent in person or by mail, facsimile, or overnight courier) must be received within three (3) days after the closing date of the announcement. If sending an electronic application poses a hardship, applicants may contact the issuing SHRC prior to the closing date for assistance. Reasonable accommodations will be made for good cause. Employees may request and be provided assistance with the automated staffing system. Such assistance will be provided on duty time.

- D. Employees on extended leaves of absence (i.e., on detail, travel, military leave) will be given automatic consideration for specific kinds of jobs during the period of extended absence provided the employee:
  - 1. Submits written notification to the SHRC prior to departure which specifies the anticipated duration of the absence and the specific series, grade level(s), program or office, and tour of duty for which consideration is sought; and;
  - 2. Submits a current SF-171, OF-612, or resume and performance appraisal in triplicate to the SHRC.

## SECTION 6

- A. The Employer agrees that selective placement factors will only be used when they are essential to the successful performance of the position. In such cases they will constitute a part of the minimum requirements of the position and must be stated in writing. A copy of any selective placement factors will be retained in the merit promotion file.
- B. Candidates will be evaluated against basic eligibility requirements, selective placement factors, and other appropriate criteria established for the position.
- C. The SHRC will determine which applicants meet the established minimum qualifications for the position at each announced grade.

## SECTION 7

- A. Rating and ranking of applicants will normally be accomplished by use of the automated staffing system. The initial screening of candidates to determine eligibility (i.e., "minimally qualified") will be accomplished through the automated self-certification process in which the applicant will respond to a series of ranking questions included in the vacancy announcement. A score based on those responses will determine eligibility for further consideration. Applicant scores are subject to adjustment based on an evaluation by a SHRC representative or designated management official that the applicant's self-rating is not appropriate. Any representative or official that makes adjustments must have knowledge of the position being filled and must not be a supervisor over the position, including selecting and recommending officials. A complete record of any adjustments, including the date of an adjustment, the reasons thereof, and the name/title of the individual making the adjustment(s), will be maintained

in the automated staffing system data base, a copy of which is available for the affected employee's review.

In the event that the automated staffing system is not available or for other business reasons it is not used, all applicants found to be minimally-qualified will then be rated and ranked by either a SHRC representative or by a Qualifications Review Board (QRB) that will consist of at least two individuals, one of whom may be designated as the chairperson. Insofar as practicable, QRB membership will include representation of women, minorities, and/or handicapped employees. A representative of the servicing HRC will be available to provide advice and assistance to the QRB. At least one QRB member must have knowledge of the position being filled. All QRB members will hold positions at or above the full performance level of the vacant position. Supervisors over the position, including selecting and recommending officials, will not serve as QRB members.

- B. Candidates using the automated staffing system will be evaluated on the basis of their responses to questions relating to the knowledge, skills, and abilities (KSAs) that are needed for successful job performance in the position. Automated staffing system questions must be closely related to the principal duties of the position. It is understood that automated staffing system questions will be developed and selected for every position prior to announcing the vacancy.

In the event that the automated staffing system is not available or for other business reasons, it is not used, candidates will be evaluated based upon their knowledge, skills, and abilities (KSAs) which are needed for successful job performance in the position. KSAs must be closely related to the principal duties of the position. It is understood that KSAs for every position will be developed prior to announcing the vacancy.

## SECTION 8

- A. Under the automated staffing system, all applications will be rated by the system and the servicing HRC representative will evaluate all job-related information submitted by the highest ranking candidates to(a) ensure that the applicants meet the minimum qualifications requirements and, (b) support their responses to the automated staffing system questions in their resumes and narrative responses.

In the event that the automated staffing system is not available or for other business reasons, it is not used, the QRB or the appropriate SHRC representative will evaluate all job-related information submitted by every minimally-qualified applicant on his/her application. This review will be done to determine the candidate's potential to perform in the vacant position and to determine the best qualified candidates by assessing the extent to which their experience, education, training, appraised performance, special achievements, awards, and outside activities, as reflected in their applications, give evidence that they possess the KSAs identified for the vacant position. The QRB or HRC representative will use a rating schedule or crediting plan based upon the KSAs, as developed jointly by the requesting office and the servicing HRC, to rate and rank candidates for a specific position. Only the criteria and established point values given in

the rating schedule or crediting plan for the vacant position will be applied in this process. The QRB or HRC representative will provide a fair and objective assessment of each applicant's potential to perform in the vacant position. The servicing HRC and Management of the office in which each position is located will work to set benchmarks, weights and factors, etc., as appropriate to the position, when developing the rating schedule or crediting plan.

- B. All candidates for promotion will be rated and ranked consistent with law, rule, regulation and this agreement.
- C. Performance appraisals of record may be used as a supporting document to demonstrate ability to perform the KSAs.
- D. Under the automated staffing system, applicants will be tentatively rated and ranked on the basis of their own responses to the ranking questions contained in the vacancy announcement. These initial scores may be subject to adjustment pursuant to the procedures outlined in Section 7A. A complete record of any adjustments made on the basis of an interview, including the date of an adjustment, the reasons thereof, and the name/title of the individual making the adjustment(s), will be maintained in the automated staffing system database, a copy of which is available for the affected employee's review.
- E. In the event the automated staffing system is not available or, for other business reasons, it is not used, candidates will be ranked according to their rating scores assigned by the QRB or HRC representative. When a QRB is used, the total scores assigned by individual QRB members will be averaged to arrive at the final rating for each candidate. Where possible, rating and ranking officials will document the basis for their various assessments, and this documentation will be maintained by the SHRC in the merit promotion file for the position.
- F. Anyone present during QRB deliberations is prohibited from divulging to any unauthorized person, including the selecting official, any of the following: contents of rating and ranking worksheets, QRB deliberations, and the numerical scores assigned to candidates. If any QRB member violates this provision, the Employer will take appropriate action.

## SECTION 9

- A. Candidates will be referred to the selecting official as described below:
  - 1. The name(s) of any employee(s) entitled to priority consideration for a particular position will be referred prior to issuing a vacancy announcement for that position. An employee who is found to have been improperly excluded from a best-qualified list for a position for which s/he competed and met minimum qualifications is entitled to one priority consideration for the next vacancy occurring thereafter for the same or an equivalent position, consistent with the provisions of Section 12, below. Priority consideration

does not provide a selection entitlement. It means that the employee is not required to compete with other employees for promotion; her/his selection may be processed as an exception to this Article's requirements.

2. If the position remains open after any priority consideration candidates are referred and considered, the HRC will issue the vacancy announcement and follow the procedures in the applicable Merit Promotion Plan and this Article. After all required steps have been taken, the HRC will identify any applicants who may be entitled to placement under the HHS Career Transition Assistance Plan (CTAP) or the Interagency Career Transition Assistance Plan (ICTAP). If any such applicant exists, the HRC will determine if s/he is "well-qualified" as defined herein. Any "well-qualified" CTAP or ICTAP applicant will be selected for and offered the position before any other best-qualified candidates are referred to the selecting official. For purposes of this Article, a CTAP/ICTAP-eligible employee will be considered "well-qualified" if s/he attains a score at or above the cut-off for placement on the best-qualified list. If the Employer receives five or fewer applications, such that all candidates' names would be referred to the selecting official without rating and ranking, any CTAP/ICTAP-eligible employees who have applied must be rated and ranked individually against the crediting plan. A CTAP/ICTAP-eligible employee who attains a score of at least ninety (90) out of one hundred (100) points will be considered "well-qualified" in this situation.
3. If the vacancy is not filled using CTAP/ICTAP procedures, the HRC will furnish the selecting official with the names of candidates available for selection, as follows:
  - a. Based upon the results of the evaluation of the candidates by the QRP or HRC, the top five (5) candidates will be identified as the best-qualified applicants for the position. If a retained grade employee is among the best-qualified candidates, her/his application package will be referred to the selecting official on a priority consideration basis, before any other names are referred. If s/he is not selected, any documentation of the reasons(s) for non-selection must be handled consistent with the applicable Instructions dealing with the placement program for employees on retained grade and/or pay.
  - b. If a retained grade employee is not selected based upon priority consideration, the full best-qualified list will be referred to the selecting official with applicants' names listed in alphabetical order. Retained grade and retained pay employees will be so identified on the best-qualified certificate. There is no requirement to select retained grade/pay employees.
  - c. Other qualified applicants, not rated and ranked, who wish to be considered for either reassignment, voluntary change to lower grade, or

re-promotion will be referred separately from the best-qualified candidates, as well as other non-competitive candidates eligible under various other appointing authorities.

- B. The selecting official will make a selection without personal favoritism, without discrimination, and without consideration of non-merit factors. An employee's balance of annual or sick leave may not be used by a selecting official as a reason for selection or non-selection of that candidate. This does not preclude the consideration of existing abuse of leave and its effect on the employee's ability to perform the requirements of the position.
- C. The selecting official will make the decision to select or not to select within the prescribed timeframe as defined by the HHS Merit Promotion Plan after issuance of the best-qualified list. Where the selecting official does not make a selection off that list, any subsequent action to fill the vacancy will again be governed by the provisions of this Article.
- D. Alternate or additional selections may be made from a properly-issued best-qualified list within the prescribed timeframe as defined by the HHS Merit Promotion Plan from the issue date of the promotion certificate if:
  - 1. the original selectee declined or vacated the position; or
  - 2. additional positions are established or become vacant with the same title, series, and grade, which are in the same geographic location (commuting area) as the position announced and are to be evaluated under the same rating schedule or crediting plan criteria.

## SECTION 10

Selected employees within HHS will normally be released for promotion to the new position at the beginning of the first pay period that occurs two (2) full weeks after the releasing official has been notified of the selectee's official offer and acceptance of the position. Compelling reasons may delay the reporting date; in such a situation, the promotion will be effected on the earliest feasible date.

## SECTION 11

- A. The Employer will inform unsuccessful applicants of the results of their consideration to the maximum extent possible.
- B. Unsuccessful applicants may consult and/or obtain advice from, their SHRC specialists concerning specific qualifications needed for desired positions and/or a first-line supervisor concerning ways to enhance one's qualifications for positions under his/her supervision. This does not bar the use of the HHS Work Life Center where available to employees,

C. Following completion of the selection process and upon written request to the servicing HRC, employee-applicants will be provided the following information about a position announced under this Article for which they applied in a timely manner:

1. Whether or not they met the minimum qualification requirements for consideration;
2. Whether or not they ranked in the group from which final selection was made (the “best-qualified” list) and;
3. The name(s) of the selectee(s) for the position.

## SECTION 12

The Employer will maintain required records in merit promotion files for at least two (2) years.

## SECTION 13

Although career advancement is the intent and expectation in the career-ladder system, promotions within career ladders are neither automatic nor mandatory. Consideration for career ladder promotions would be given if:

- An employee’s performance as determined by the supervisor, demonstrates the potential to perform the duties at the next higher grade level;
- The current performance appraisal rating is at the “fully successful” level or higher. In addition, no employee may receive a career ladder promotion who has a rating below “fully successful” on a critical element that is also critical to performance at the next higher grade of the career ladder;
- The employee meets minimum time in grade and qualification requirements and;
- There is available work at the higher grade level.
- The promotion is not precluded due to budgetary constraints.

## **ARTICLE 30**

### **ASSIGNMENT OF WORK**

#### **SECTION 1**

The Employer agrees to the extent practicable, that work assignments will be made in a fair and equitable manner.

#### **SECTION 2**

- A. In making assignments to meet its workload needs, the Employer will attempt to enhance employee job satisfaction when practicable and compatible with attainment of the overall missions of the DNHDP.
- B. The Employer agrees that, to the extent practicable, employees will be assigned manageable workloads. In determining what is manageable, the Employer will consider personnel ceilings, office workload, time limits, bona fide emergencies, type and grade of cases or work, priority programs, and other assigned duties of employees and the Employer.

#### **SECTION 3**

The Employer will seek to assign work that is related to the employee's position, taking into account the interests of accomplishing the DNHDP's mission in an efficient and effective manner.

#### **SECTION 4**

Nothing herein may limit the Employer's right to assign work in order to assure the accomplishment of work and completion of assignments and projects.

#### **SECTION 5**

The Employer reserves the right to structure the work force using teams and other concepts to increase mission accomplishment.

#### **SECTION 6**

The employer agrees to make available a communication device, e.g., cell phone, radio, etc., when it is necessary to be in contact with the employee's supervisor or his/her designee.

## **ARTICLE 31**

### **DETAILS & TEMPORARY PROMOTIONS**

#### **SECTION 1**

- A. The term “detail” as used in this Article means a temporary assignment of an employee to a different classified position within the bargaining unit, or to a different set of unclassified duties, for a specified period of time, with the employee returning to her/his position of record at the end of the detail. The employee continues to encumber the bargaining unit position from which s/he was detailed during the term of the detail.
- B. The provisions of this Article apply to details to bargaining unit positions at the same or higher grade. Details may also be used to provide opportunities for interchange programs or developmental assignments. Selections for details will be made on basis of seniority in the case of two equally qualified employees.

#### **SECTION 2**

- A. Details expected to last more than one hundred twenty (120) days will be announced for solicitation of interest, except in circumstances such as an emergency, where unique expertise is required, or when the person to be detailed is a participant in a special program which includes rotational work assignments (e.g., Presidential Management Fellow). Employees interested in selection for the detail must respond in accordance with the procedures specified in the announcement.
- B. Areas of consideration for details will be based on legitimate work-related reasons. To the extent feasible, information about detail opportunities will be disseminated to all eligible employees within the defined areas of consideration.
- C. Selection for details will be accomplished in compliance with Article 29 (Merit Promotion) when the Employer reasonably expects the detail to the higher graded position to last longer than 120 consecutive days. However, the Employer may elect to use competitive procedures for details of lesser time.
- D. Details of more than thirty (30) consecutive calendar days will be formally documented in the employee’s OPF, which may be done electronically. Confirmation of the detail will be provided to or, if electronically-filed, may be printed by the employee.

#### **SECTION 3**

The Employer agrees that where it is expected that an employee will be detailed to a higher-graded bargaining unit position for a period in excess of thirty (30) consecutive days, the



employee will be temporarily promoted to that position effective at the beginning of the first full pay period following the 30<sup>th</sup> day of the detail, provided that the employee meets the appropriate qualification standards and other legal and regulatory requirements, such as time in grade.

#### SECTION 4

In order to ensure a smooth transition between positions:

- A. the Employer will provide necessary orientation to the employee at the beginning of any detail;
- B. the Employer will provide to an employee who has been on detail to a different work area, the time reasonably necessary to re-familiarize her/himself with the position to which s/he is returning; and
- C. the Employer will inform the employee of any changes in operating procedures which affect the manner in which the duties of the position of record are performed.

#### SECTION 5

An employee's rating while on detail will conform to the requirements of Article 24.

#### SECTION 6

The Employer retains the right to terminate a detail at any time.

#### SECTION 7

The experience that an employee obtains while on a detail will be credited as experience either in the employee's current position or the position to which s/he is detailed, whichever is more advantageous to the employee, subject to qualification rules and principles.

#### SECTION 8

Bargaining Unit Employees detailed or temporarily promoted into a non-bargaining unit positions are no longer covered by this agreement for the duration of the detail, or until such time as they return to a "covered" position.

## **ARTICLE 32**

### **REASSIGNMENTS**

#### **SECTION 1**

- A. A reassignment is a permanent assignment of an employee from one bargaining unit position to another bargaining unit position without promotion, demotion, or break in service. Notwithstanding this definition, the procedures set forth in this Article apply only to substantive reassignments; they do not apply to personnel actions which are denominated “reassignments” but are only technical in nature (e.g., those which change a position description number, etc.).
- B. The Employer has the right to reassign employees. In doing so, the Employer will make reassignments to appropriately classified jobs at the appropriate grade levels.
- C. The Parties agree that decisions concerning reassignments will take into account the goals of increasing career-related flexibility and mobility, and minimizing the need for involuntary reassignments.

#### **SECTION 2**

The Employer's decision to reassign employees will be based on legitimate management considerations in the interest of the Employer. Reassignments will not be used as punishment, in lieu of disciplinary action, or based on personal favoritism.

#### **SECTION 3**

Employees are encouraged to make recommendations to their supervisors on improvements in the structure of positions in the unit and to express their interest in being considered for the positions they are suggesting, if such positions are established in the future. The supervisor will give reasonable consideration to such suggestions.

#### **SECTION 4**

The Employer agrees that when an employee has been reassigned because her/his position was abolished, s/he will be given priority if that position is re-established within one year. To receive priority consideration, the employee must make timely application for the position and clearly indicate that s/he held the position when it was abolished. Priority consideration means that the employee alone must be given bona fide consideration by the selecting official, based on legitimate job related criteria for the position to be filled, before any other candidates are referred for consideration.

#### **SECTION 5**

Employees in identical positions, e.g., same title, series, grade, and qualifying experience,

may request to exchange positions with one another so long as they do not request payment of moving expenses from the Employer. Approval or denial of any such request will be in the Employer's sole discretion.

## SECTION 6

The Employer will timely provide adequate and appropriate training for the reassigned employee, if necessary. In addition, employees will be allowed a reasonable amount of time to become proficient in the new duties.

## **ARTICLE 33**

### **PROBATIONARY AND TRIAL EMPLOYEES**

#### **SECTION 1**

The probationary or trial period is a final and highly significant step in the examining process. It provides the final indispensable test, that of actual performance on the job, which no preliminary testing method can approach in validity. During the probationary or trial period, employees' conduct and performance in the actual duties of their positions may be observed, their pre-employment background may be investigated, and they may be separated from the federal service without undue formality. Thus, the probationary and trial periods provide protection against the retention of any person who, in spite of having passed preliminary tests, is found to be lacking in fitness, and capacity to acquire fitness, for government service.

#### **SECTION 2**

Probationary employees may choose voluntary resignation in lieu of termination at any time prior to the date of their termination. Employees in a trial period may voluntarily separate at any time prior to the date established as the latest possible ending point for their employment. If the probationary or trial employee voluntarily resigns or separates, the employee's Official Personnel Folder (OPF) will only reflect the voluntary departure.

#### **SECTION 3**

If the probationary or trial employee believes that her or his termination is based on discrimination, the employee may pursue established Equal Employment Opportunity (EEO) complaint procedures.

#### **SECTION 4**

The probationary or trial employee may also pursue other available avenues for redress such as any forum available to the probationary/trial employee under applicable law, rule and/or regulation.

## **ARTICLE 34**

### **TRAINING AND CAREER DEVELOPMENT**

#### **SECTION 1**

- A. The parties agree that the training and development of employees is a matter of significant importance to fulfilling the mission of the Employer. Training and career development are, however, a shared responsibility between the Employer and each employee. The Employer and the Union recognize that each employee is responsible for applying reasonable effort, time and initiative to increasing her/his potential through self-development and training.
- B. The Employer agrees to provide employees with training it deems necessary to assist them in the performance of official duties, subject to budgetary and workload considerations. Opportunities for such training will be provided in a fair and equitable manner, and in accordance with applicable laws and regulations in force at the time it is requested or given, keeping in mind the principles of equal employment opportunity.
- C. Employees are encouraged to participate in professional activities of their occupation. The Employer will give consideration to requests to use annual leave, leave without pay, accrued compensatory time or credit hours, and/or duty time, as appropriate, to participate in professional meetings, conferences, or continuing education courses. The Employer will make a special effort to grant employee requests, absent workload exigencies, for time to take examinations, training, or continuing education courses directly related to conditions of continued employment.

#### **SECTION 2**

The Employer agrees that when an employee is placed in a new job, the Employer will provide training which it deems necessary for the employee to perform the duties of the new position. When new technology or equipment is introduced into an office/unit and creates the need for additional skills or abilities among its employees, the Employer agrees, if practicable, to provide appropriate training to those employees directly affected.

#### **SECTION 3**

The Employer will make available to bargaining unit employees information concerning appropriate training educational programs provided by the Employer, with due consideration being given to geography, specialty area(s), and funds availability.

#### **SECTION 4**

- A. The nomination and selection of employees to participate in training and career development programs and courses will be in accordance with equal employment

opportunity principles, applicable statutes and regulations in effect at the time the program/course is given, and this Agreement.

- B. The Employer will select employees for training based upon factors such as:
  - 1. The organization's need for the skills to be acquired at the training, in order to meet organizational objectives;
  - 2. The employee's need to acquire those skills necessary in order to perform the duties associated with meeting organizational objectives; and
  - 3. The employee's likelihood of successfully completing the training and applying the information learned in the job.
- C. In addition to the factors set forth in subsection 4.B above, training authorization will be based upon workload, operational, and budgetary considerations. In determining the appropriate methods for training, particular attention will be given to distributed learning methods, such as computer-based and on-line training.
- D. An employee may be granted duty time to take authorized training in which s/he elects to participate and which the Employer agrees is beneficial to the Government, provided that the absence would not create a workload problem and the employee is unable to go to the training during non-duty hours. The Employer will consider leave requests in lieu of duty time, as a means to permit employee attendance at training rather than disapproval of such a request.

## SECTION 5

- A. All training and related expenses must be approved and authorized, or denied, in advance of the starting date of the training. Additional unanticipated expenses incurred by the employee may be submitted to the Employer for consideration of possible reimbursement.
- B. In addition to the general criteria utilized for selection of employees to participate in training, the Employer will consider the following criteria in approval and authorization of expenses as appropriate to the training involved:
  - 1. the training will directly contribute to an increased ability to perform an employee's current job or a job s/he has been assigned to fill, consistent with the mission of the Employer;
  - 2. comparable training is not available through HHS-developed courses, and it would be too costly for HHS to develop a suitable program;
  - 3. reasonable inquiry has failed to disclose suitable, adequate, and timely programs being offered without cost by other government agencies within the

local area;

4. the course meets the needs of the employee and the Employer as well as or better than other courses of its nature which may also be available at that time;
  5. the course is not being taken primarily for the purpose of obtaining a degree; and
  6. budgetary considerations permit.
- C. The Employer will consider cost-sharing of training expenses with an employee, as an alternative to disapproval of a training request which exceeds reasonable expenditure of funds under the circumstances.

## SECTION 6

- A. Employees who are approved and authorized to attend any type of training are expected to attend all sessions of the course/program and satisfactorily complete its requirements.
- B. An employee who begins but fails to satisfactorily complete training, the costs of which have been approved and authorized by the Employer, will reimburse the Employer for all tuition and related expenses which were incurred for such training. If the reason for non-completion of the training is compelling and beyond the employee's control, the Employer may excuse all or part of this requirement.
- C. An employee who is unable to attend training for which s/he has been authorized will inform her/his supervisor or applicable training coordinator as soon as possible after becoming aware of the impediment to attendance. The Employer will act on this information in a timely manner in order to maximize the opportunity to make other arrangements (e.g., re-schedule the training for another date the course is offered, substitute another employee into the course, etc.) and recover costs already paid or avoid incurring them. To the extent that any costs cannot be recovered after being incurred for the training, the employee is responsible for paying them or reimbursing the Employer if they were already paid. If the reason for non-completion of the training is compelling and beyond the employee's control, the Employer may excuse all or part of this requirement.

## SECTION 7

When training being offered will lead to the non-competitive promotion of a non-temporary bargaining unit employee, selection for the training must be made in accordance with merit promotion procedures outlined in Article 29 (Merit Promotion) of this Agreement.

## SECTION 8

- A. The Employer, if requested by the employee, will arrange for discussion of personal career development opportunities and goals. This may be accomplished not only through meeting(s) with the supervisor, but also, or in lieu thereof, using human resources personnel, contractors, etc., who have particular expertise on career development, assessment of skills and abilities, and matching of employees' interests with potential positions and careers.
- B. Employees are encouraged to take initiative in their own career development, including the development of individual development plans (IDPs), as desired. Where IDPs are utilized, they should be established jointly between the Employer and the employee. The objectives of such a plan should be to address skills needed by employees in their current positions, to identify skills needed for advancement beyond the current grade level, and to prepare them for new career opportunities (e.g., new positions, re-engineered or reorganized positions, etc.). An IDP should establish a series of milestones and state the responsibilities of each party for their realization.



## **ARTICLE 35**

### **TRAVEL**

#### **SECTION 1**

- A. Employees that travel on government business will be reimbursed in accordance with government wide travel regulations and the HHS Travel Manual.
- B. Employees normally travel during their normal duty hours. To this end, the Employer will strive to schedule travel during the normal duty hours of traveling employees. Where consistent with official business needs, employees may travel on their own time.
- C. Time spent in a travel status away from the official duty station of an employee is not hours of work unless:
  - "(a) the time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime hours; or
  - "(b) the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from such event to her or his official duty station." (quoting 5 U.S.C. 5542)
- D. Employees may be required to report to work or take an appropriate type of leave for a portion of the departure and/or return travel day, depending on such factors as work schedule, time in travel status, available flight schedules, and workload.

#### **SECTION 2**

An employee on extended travel may request to return to the official duty station or place of permanent residence during non-workdays, subject to the approval of the Employer. If approved for a trip to the official duty station on non-workdays, s/he will be reimbursed for allowable travel expenses not to exceed the amount reimbursable had the employee remained at the temporary duty station.

#### **SECTION 3**

Employees must use coach class accommodations for travel by airline or train, unless specifically authorized and approved to use a higher class of service ("premium class," which includes, e.g., first class and business class), consistent with government-wide regulations and the HHS Travel Manual. International first-class travel is not permitted. Other premium-class

international travel is subject to strict review, clearance, and approval processes with which employees are required to comply. The authority to review all requests for international premium-class travel and to deny any such request resides with the designated official at the Department level, consistent with government-wide regulations.

#### SECTION 4

When an employee in travel status becomes incapacitated by illness or injury and is expected to remain so for a significant period of time, the Employer will reimburse the employee for expenses incurred in returning to the employee's regular duty station. Allowances for expenses will be paid in accordance with applicable travel regulations.

#### SECTION 5

The Employer agrees to reimburse employees in a travel status for authorized and approved per diem and transportation expenses incurred by them in the discharge of their official duties. Employees traveling on official business are expected to exercise the same care in incurring expenses as would a prudent person when traveling on personal business. Expenses which will be authorized and approved are confined to those essential to the transaction of official business. Per diem will be paid consistent with government-wide rules and regulations in effect at the time the travel is performed, as supplemented by any applicable provisions of the HHS Travel Manual. Employees are responsible for all excess costs and additional expenses incurred as a result of personal preference or convenience.

#### SECTION 6

- A. The Employer participates in the contractor-issued charge card program established and administered on a government-wide basis by GSA. Employees identified by the Employer to participate in this program for official business travel must submit an application for the charge card to the contractor, subject to a credit check and, when approved for participation, must adhere to all rules and procedures of the program.
- B. Charge cards issued by the contractor must only be used while on government-authorized travel to pay for expenses reasonably incurred for official business purposes, including approved automated-teller machine (ATM) withdrawals for cash travel advances. Employees are subject to discipline for misuse of the travel charge card.
- C. The Employer may, at the request of the contractor consistent with applicable statute and government-wide regulations, collect from an employee's net pay any undisputed delinquent amounts that are owed to the travel charge card contractor. Employees are also subject to discipline for failing to pay in full their travel charge card balance each month consistent with statute and government-wide regulations, as supplemented by the HHS Travel Manual in effect at the time the charges were incurred and the employee's cardholder agreement.

## SECTION 7

- A. Employees are required to use the travel management system designated by the Employer for making their travel arrangements (common carrier, rental car, and lodging).
- B. Travel by common carrier is presumed to be the most advantageous method of transportation to the government and must be used when reasonably available.
- C. The Employer may approve travel by a method of transportation other than common carrier only when permitted by criteria provided in the Federal Travel Regulations, i.e., the use of common carrier would interfere with the performance of official business, such use imposes an undue hardship on the traveler, or the total cost of travel by common carrier would be greater than the total cost of performing the same travel by the other method proposed. If the employee elects not to travel by the method of transportation required by regulation or selected by the Employer, the employee is only entitled to be reimbursed for the lesser of her/his actual cost or constructive cost of the authorized method of travel.
- D. When an automobile is to be used for travel, an employee may request authorization to use her/his privately owned vehicle (POV in lieu of a government-owned, leased, or rented vehicle. Reimbursement will be made in accordance with government-wide regulations. If a POV is used solely for the employee's convenience or benefit, reimbursement for POV mileage may not exceed what the cost would have been to use the least expensive of a government-owned, leased, or rented vehicle.
- E. The use of a government-owned, leased, or rented vehicle is subject to applicable law, rule, and regulation. Use of government-furnished or government-contract lease or rental vehicles is strictly limited to official business purposes. Use of such vehicles for personal side-trips or errands is prohibited.

## SECTION 9

- A. An employee traveling overnight within Continental United States "CONUS" may be reimbursed for one brief telephone call per day to her/his residence in accordance with government-wide rules and regulations and the HHS Travel Manual. Reimbursement for such telephone calls is:
  - 1. limited to actual expenses, not to exceed \$5.00 times the number of consecutive days of travel on official business;
  - 2. applicable only when the employee is authorized to be on travel for two or more consecutive nights; and
  - 3. conditioned upon the unavailability of government-provided long distance telephone systems and services (including government-issued

telephone calling cards) during each day of travel on which expenses are incurred.

- B. An employee on CONUS travel may be reimbursed only for telephone call(s) home from a foreign country which have been authorized prior to the beginning of travel and are shown on the travel order. Permitted frequency and cost must be stated on the travel order and adhered to by the employee.

## SECTION 10

Advances of travel fundsError! No bookmark name given. are based upon estimated expenses which a traveler is expected to incur on authorized travel and which cannot be paid with a government travel charge card. Advances are normally issued in the form of authorized ATM cash withdrawals. Employees who qualify under a limited exception and are excused from applying for a government travel charge card may obtain travel advances up to sixty (60) percent of the estimated cash expenses for the travel.

## SECTION 11

- A. Employees are required to use the travel system(s) designated by the Employer from the inception of travel planning through completion of each trip. These systems may be electronic and must be used, e.g., to secure travel orders and submit travel vouchers.
- B. Travel vouchers must be submitted within five (5) days after completion of the trip or every thirty (30) days if the employee is in a continuous travel status, unless a shorter period of time is set by the Employer for specific travel.
- C. All advances not using the travel charge card must be accounted for on the employee's travel voucher submitted at the conclusion of the trip. If the advance exceeds the approved reimbursable amount for the trip, the employee must refund the excess at the time the travel voucher is submitted. If any portion of an advance remains outstanding for at least thirty (30) days after the travel was completed, the Employer may initiate the salary offset process provided in the HHS Travel Manual in order to recoup the outstanding advance.
- D. The Employer agrees to notify the employee of an improper travel claim and the reason(s) it is improper within the applicable timeframe set forth in statute or government-wide regulation in effect at the time the voucher was submitted.
- E. The Employer agrees to reimburse the employee for authorized and approved travel expenses, consistent with law and government-wide regulations as supplemented by the HHS Travel Manual, within the applicable timeframe set forth in statute or government-wide regulation in effect at the time the voucher was submitted.

## SECTION 13

Leave in conjunction with travel must be approved in advance and reflected on the travel order. (Emergency situations arising during travel, such as sudden illness, must be raised with an appropriate management official and approved when they occur.) Employees are prohibited from taking annual leave in conjunction with international trips that are paid for, in whole or in part, by one or more non-Federal source(s). An employee may be permitted to use no more than three (3) days of annual leave in conjunction with a single international trip paid by the Employer per fiscal year, and this one-time use of annual leave per fiscal year must be requested and approved in advance.

## **ARTICLE 36**

### **DISCIPLINARY ACTIONS**

#### **SECTION 1**

This Article applies to all employees who have completed the applicable probationary or trial period, as appropriate, in their current positions. The HHS Instruction 752, entitled Corrective Action, Discipline and Adverse Action, is hereby incorporated by reference as a guide for the administration of this Article and Article 37. (Appendix 6)

#### **SECTION 2**

- A. For purposes of this Article, disciplinary actions include suspensions for fourteen (14) days or less, and written reprimands. Disciplinary actions effected under 5 U.S.C. 7512 will be processed in accordance with the procedures contained in this Article.
- B. Disciplinary actions exclude counseling, whether oral or in writing. When an employee is counseled in writing, the employee may respond in writing and have the response attached to the counseling document.

#### **SECTION 3**

- A. In effecting disciplinary actions, the Employer endorses the use of like penalties for like offenses and progressive discipline. However, mere surface consistency is to be avoided. The Employer shall give due regard to the existence of any mitigating and/or aggravating circumstances, the nature of the position occupied by the employee at issue, and any other factors bearing upon the incidents or acts underlying the action. The degree of discipline administered will be proportionate to the offense and the employee's disciplinary history, and will be determined on a case-by-case basis.
- B. In determining the appropriate penalty to propose and/or impose in a disciplinary action, the Parties agree that it is appropriate for supervisors to consider and balance a variety of circumstances as pertinent to the case, which may result in mitigation or aggravation. Examples of such circumstances are the employee's past work and disciplinary records, length of service, the potential for her/his rehabilitation, the seriousness of the offense and its relation to the employee's duties and its impact on the agency, the consistency of the penalty with those imposed on others in similar situations, potential alternative sanctions to deter future misconduct, etc.

#### **SECTION 4**

- A. Disciplinary actions will not be taken for arbitrary and capricious reasons.
- B. An employee will be disciplined only for such cause as will promote the efficiency of the service.

C. Discipline is part of the daily responsibilities of supervisors and managers.

## SECTION 5

When the Employer takes a suspension action against an employee, the following procedures will apply:

1. The written proposal will be delivered no less than fifteen (15) days prior to taking the disciplinary action and will contain the specific reasons for the proposed action, stated in detail. It is understood that the proposal notice is not grievable upon receipt. However, disputes regarding the proposal may be merged into a grievance concerning the final decision of the Employer, after the final decision is issued.
2. The employee will be given at least seven (7) days from the date s/he receives the notice of proposed disciplinary action, in which to make an oral and/or written reply. The employee may make an oral reply pursuant to the provisions of 5 C.F.R. 752.404(c). Reasonable requests for one extension to submit or deliver a reply may be granted; any additional extension request(s) to respond to an adverse action notice must be supported by substantial good cause and are in the Employer's sole discretion to approve or deny.
3. The proposal notice will specify who will hear/receive the oral and/or written reply. This official will be the person who will be making the final decision on the matter, or his/her designee.
4. The employee will have the right to be represented in the preparation and presentation of her/his reply. If the employee elects to have a representative, s/he must inform the deciding official, in writing, of the representative's name. The employee will be given reasonable time to prepare the reply, in accordance with the terms of Article 5 (Employee Rights and Responsibilities).
5. The proposal notice will inform the employee of her/his right to review the material which was relied upon to support the proposed action. The term "materials relied upon" includes all information contained in the disciplinary action file.
6. The Employer will make a copy of such material available for review, concurrent with the delivery of the proposal notice to the employee. If requested by the employee or her/his representative, the Employer will furnish a copy of such material prior to the oral reply. Where management has relied upon witnesses to support the reasons for the proposed action, the Employer will make available any written witness statements. The Employer reserves the right to sanitize any material which is provided to the employee, when

required by law.

7. In making a reply, the employee may set forth mitigating circumstances, refute aggravating circumstances, and/or give reasons why the proposed action should not be effected.
8. If an employee chooses to make an oral reply, such reply will be made at the worksite of the employee if both s/he and the deciding official work in the same location. When the employee and deciding official are not in the same location, an oral reply will be delivered by audio- or video-conference, as circumstances permit, unless otherwise determined by the Employer for purposes of that case only.
9. The Employer will make a written summary of the employee's oral reply. A copy of the summary will be included in the material relied upon, and it will also be provided to the employee's representative (or to the employee if s/he is unrepresented). Within three (3) workdays after receiving the written summary, the employee or representative may submit comments on it. The comments will be added to the official record and will be considered by the Employer before a final decision on the matter is rendered.
10. The final decision in a disciplinary action covered by this section must be made by a higher-level official than the official who issued the notice of proposed action, unless the official is the DNHDP Director, in which case the decision will be made by an appropriate official identified by the Employer. The decision letter will state which charge(s) is/are sustained and the reason(s) therefore, and will respond to relevant defenses raised by the employee.
11. In cases of off-duty misconduct, the proposal and decision letters will describe the relationship (often referred to as the "nexus") between the misconduct and the employee's position.

## SECTION 6

In the event the Employer sustains the charge(s) and effects a disciplinary action against the employee, s/he may elect to challenge the action in only *one* of the following ways:

1. A grievance filed under the negotiated grievance procedure contained in Article 38 of this Agreement. Grievances over reprimands will start at the first step of the grievance procedure; grievances over suspensions will start at the final step of the grievance procedure. After completion of the grievance procedure, the Union has the option to appeal a disciplinary decision to arbitration (pursuant to the provisions of Article 39 (Arbitration)).
2. A formal complaint of discrimination filed under the administrative EEO process.



The final decision letter which is issued on the disciplinary action to the employee will contain a statement of her/his right to challenge the action in one of these two ways. Once an employee has elected one of these procedures, the employee may not change thereafter to the other procedure.

#### SECTION 7

- A. Letters of reprimand will be retained in the employee's OPF for the period of time specified in the letter, which may not exceed two (2) years, unless there has been intervening discipline relating to the same type of misconduct during that time period.
- B. Records of reprimands will be purged from the applicable system of records file in a timely manner.

## **ARTICLE 37**

### **ADVERSE ACTIONS**

#### **SECTION 1**

This Article applies to all employees who have completed the applicable probationary or trial period, as appropriate, in their current positions.

#### **SECTION 2**

- A. For purposes of this Article, an adverse action is defined under 5 U.S.C. 7512 as including a suspension of more than fourteen (14) days, reduction in grade or pay, furlough of thirty (30) days or less, and removal.
- B. An adverse action will be taken only for such cause as will promote the efficiency of the service.
- C. Adverse actions will not be taken for arbitrary or capricious reasons.

#### **SECTION 3**

In effecting adverse actions, the Employer endorses the use of like penalties for like offenses and progressive discipline. However, mere surface consistency is to be avoided. The Employer shall give due regard to the existence of any mitigating and/or aggravating circumstances, the nature of the position occupied by the employee at issue, and any other factors bearing upon the incidents or acts underlying the action. The degree of discipline administered will be proportionate to the offense and the employee's disciplinary history, and will be determined on a case-by-case basis.

#### **SECTION 4**

- A. Decisions of courts and the Merit Systems Protection Board (MSPB), and issuances of OPM, have long recognized that a number of factors (often referred to as the "Douglas factors") may be relevant considerations in determining the appropriateness of a penalty in an adverse action case. Without purporting to be exhaustive, the factors generally recognized at the time of execution of this Agreement as being relevant to the setting of the penalty include the following:
  - 1. the nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
  - 2. the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;

3. the employee's past disciplinary record;
  4. the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
  5. the effect of the offense upon the employee's ability to perform at a fully satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
  6. consistency of the penalty with those imposed upon other employees for the same or similar offenses;
  7. consistency of the penalty with any applicable agency table of penalties;
  8. the notoriety of the offense or its impact upon the reputation of the agency;
  9. the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
  10. the potential for the employee's rehabilitation;
  11. mitigating circumstances surrounding the offense, such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter; and
  12. the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.
- B. Not all of these factors will be pertinent in every case. Frequently in an individual case, some of the pertinent factors will weigh in the employee's favor, while others may not; or may even constitute aggravating circumstances. Selection of an appropriate penalty must thus involve a responsible balancing of the relevant factors in the individual case.

## SECTION 5

- A. In all cases of proposed adverse action, except as stated in Section 8 of this Article or when there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed, an employee will be given at least thirty (30) days advance written notice of the proposed action. This notice will state specifically and in detail the reasons for the action. It is understood that the proposal notice is not grievable upon receipt. However, disputes regarding the advance notice of proposed action may be merged in a grievance concerning the final decision of the Employer, after that final decision is issued.

- B. The employee will be given ten (10) days from the date s/he receives the notice of proposed adverse action, to make an oral reply and/or to submit a written reply. The employee may make an oral reply pursuant to the provisions of 5 C.F.R. 752. An employee desiring to make an oral reply must request to do so within the first seven (7) days after the employee receives the notice of proposed action. Reasonable requests for one extension to submit or deliver a reply may be granted; any additional extension request(s) to respond to an adverse action notice must be supported by substantial good cause and are in the Employer's sole discretion to approve or deny.
- C. The proposal notice will specify who will hear/receive the oral and/or written reply. This official will be the person who will be making the final decision on the matter, or his/her designee.
- D. The employee will have the right to be represented in the preparation and presentation of her/his reply. If the employee elects to have a representative, s/he must inform the deciding official, in writing, of the representative's name. The employee will receive reasonable time to prepare the reply in accordance with the terms of Article 5 (Employee Rights and Responsibilities).
- E. The proposal notice shall inform the employee of her/his right to review the material which is relied upon to support the proposed adverse action. The term "material relied upon" includes all information contained in the adverse action file that relates directly to the charge(s) and specification(s), whether favorable or unfavorable to either side's position in the matter.

The Employer will make a copy of such material available for review, concurrent with the delivery of the proposal notice to the employee. If requested by the employee or her/his representative, the Employer will furnish a copy of such material prior to the oral reply. Where management has relied upon witnesses to support the reasons for the proposed action, the Employer will make available any written witness statements. The Employer reserves the right to sanitize any material which is provided to the employee, when required by law.

- F. In making a reply, the employee may set forth mitigating circumstances, refute aggravating circumstances, and give reasons as to why the proposed action should not be effected.
- G. If an employee chooses to make an oral reply, such reply will be made at the worksite of the employee if both s/he and the deciding official work in the same location. When the employee and deciding official are not in the same location, an oral reply will be delivered by audio- or video-conference, as circumstances permit, unless otherwise determined by the Employer for purposes of that case only.
- H. The Employer will provide a written summary of the employee's oral reply. A copy of the summary will be included in the material relied upon, and it will also be

provided to the employee's representative (or to the employee if s/he is unrepresented). Within five (5) workdays after receiving the written summary, the employee or representative may submit comments on it. The comments will be added to the official record and will be considered by the Employer before a final decision on the matter is rendered.

- I. The Employer agrees that the employee may use the same means as the Employer does to take notes during the oral reply.

## SECTION 6

The final decision in an adverse action covered by this Article must be made by a higher-level official than the one who issued the notice of proposed action, unless the proposing official is the DNHDP Director, in which case, the decision will be made by an appropriate official identified by the Employer. The decision letter will state which charge(s) is/are sustained and the reason(s) therefore, and will respond to relevant defenses raised by the employee.

## SECTION 7

In any case where the charges are premised upon off-duty misconduct, the proposal and decision will describe the relationship (often referred to as the "nexus") between the misconduct and the employee's position.

## SECTION 8

In the event the Employer sustains the charge(s) and effects an adverse action against the employee, s/he may elect to challenge the action through only *one* of the three procedures below:

1. an appeal to the MSPB in accordance with applicable law and regulation;
2. under this Agreement, going directly to Arbitration (which may include an allegation of discrimination), with the Union's concurrence or;
3. a formal complaint of discrimination filed under the administrative EEO process.

The final decision letter issued on the adverse action to the employee will contain a statement of her/his right to challenge the action in *one* of the above three procedures. Once an employee has elected one of these procedures, the employee may not change thereafter to a different procedure.

## SECTION 9

The documentation supporting an adverse action will be purged/destroyed pursuant to applicable rule(s) for the system(s) of records in which the documentation is maintained. If

an adverse action is overturned, appropriate action will be taken with respect to all other records (e.g., SF-50) in accordance with the disposition of the case.

## **ARTICLE 38**

### **GRIEVANCE PROCEDURES**

#### **SECTION 1**

- A. The purpose of this Article is to provide a mutually acceptable and orderly method for the prompt and equitable resolution of grievances filed by employees or the Parties.
- B. The Employer and the Union agree to attempt in good faith to resolve grievances at the lowest possible level. The filing of a grievance may not be construed as reflecting unfavorably on an employee's good standing, performance, loyalty or desirability to the organization. Employees dissatisfied with the orders properly grounded in supervisory authority must follow the order first and then grieve the matter if they believe relief should be granted. However, the employee has a right to decline to perform his/her assigned tasks due to a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm, if there is insufficient time to effectively seek corrective action through normal hazard reporting and abatement procedures.
- C. The Union will encourage reasonable and non-frivolous use of the grievance procedures.

#### **SECTION 2**

- A. A grievance is defined as any complaint:
  - 1. by any employee in the bargaining unit concerning any matter relating to the employment of the employee;
  - 2. by the Union concerning any matter relating to the employment of any employee in the bargaining unit; or
  - 3. by an employee in the bargaining unit, the Union, or the Employer concerning:
    - a. the effect or interpretation, or a claim of breach, of this Agreement; or
    - b. any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.
- B. At the election of either party, grievances which involve the same issue and arise from the same or similar facts and actions, initiated by more than one employee, may be joined and processed as one.

### SECTION 3

The negotiated grievance procedures contained in this Article do not cover the following:

- A. complaints concerning individual rights related to a reduction-in-force;
- B. any complaint concerning retirement, life insurance, or health insurance;
- C. any suspension or removal for national security reasons;
- D. any examination, certification, or appointment;
- E. classification of any position which does not result in the reduction in grade or pay of an employee;
- F. complaints concerning veteran's preference;
- G. separation or termination of an employee serving a probationary or trial period; return of an employee serving a supervisory or managerial probation to a non-supervisory or non-managerial position; termination of an employee (including staff fellows or visiting scientists) serving on a temporary or time-limited appointment; or termination of an employee in the Student Educational Employment Program, including STEP and SCEP; or temporary employees and/or employees serving a probationary or trial period;
- H. a notice of proposed action or warning. However, disputes regarding a proposal may be merged into a grievance concerning the final decision of the Employer after that final decision is issued;
- I. the terms oral and written admonishments and oral reprimands are no longer considered appropriate. To the extent they may be inappropriately used, those actions are nonetheless not grievable. They do not constitute prior discipline, but they may be used to show that the employee was placed on notice of improper conduct.
- J. the substance of performance standards and elements/measures, and/or the determination as to whether an element/measure is critical or non-critical;
- K. ratings on individual performance elements and performance measures. However, ratings on individual performance elements and/or performance measures are subject to review through the grievance procedure when an employee grieves a final rating of record pursuant to Article 24 (Performance Management Program).



- L. a progress review, counseling session, oral caution/warning, or performance improvement plan (PIP). While the issuance of a PIP is not grievable, the Employer's final decision to remove the employee based on the PIP is grievable. Issues concerning the failure of the PIP to meet the contractual requirements regarding content (specified in Article 25, Improving Performance) may be merged into the grievance concerning the final decision to remove the employee after that final decision is issued;
- M. all other matters made nongrievable by any provision of this Agreement;
- N. any specific matter raised in an on-going unfair labor practice charge; and
- O. decisions whether or not to grant awards and/or adopt suggestions, except as to the procedures provided in Article 26 (Incentive and Performance Awards);
- P. decisions to deny, limit, or condition participation in outside activities and/or employment;
- Q. an action terminating a temporary promotion;
- R. complaints regarding non-bargaining unit positions;
- S. non-selection for promotion from a list of best-qualified candidates.
- T. any claimed violation relating to prohibited political activities;
- U. the validity and amount of an overpayment debt owed to the government by an employee;
- V. requests for waiver of overpayments which are subject to the provisions of 5 U.S.C. 5584; and
- W. order to divest

#### SECTION 4

- A. A complaint concerning actions defined in 5 U.S.C. 4303 (removal or reduction in grade based upon unacceptable performance) and 5 U.S.C. 7512 (removal, suspension for more than fourteen (14) days, reduction in grade or pay, or furlough for thirty (30) days or less for such cause as will promote the efficiency of the service) may be raised under only one of the following procedures:

1. by invoking the arbitration procedure provided in this Agreement, with the concurrence of the Union;
2. by filing a timely appeal with the U.S. Merit Systems Protection Board (MSPB) under the applicable regulatory procedure; or
3. by filing a formal complaint of discrimination under the applicable EEO process.

An employee's election of one of these procedures is irrevocable and precludes the employee from subsequently electing either of the other procedures.

- B. A complaint concerning discrimination on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation may be raised under this negotiated procedure or the appropriate statutory procedure enunciated at 29 CFR, but not both. An employee will be deemed to have exercised her/his option to raise the matter under either the regulatory procedure or this procedure at such time as the employee timely files a formal EEO complaint or timely files a grievance, in writing, under this procedure (or the Union invokes arbitration, if applicable, as the initiating step), whichever occurs first.
- C. When an employee uses the arbitration procedure for a matter that could be appealed to EEOC or MSPB and the employee's grievance is sustained on the grounds of a civil rights discrimination violation or a violation of law or government-wide regulation, the Parties will equally share the costs of the arbitration process.
- D. An employee alleging a prohibited personnel practice other than those which may be presented through the EEO complaint process, may raise the matter through one of the following procedures:
  1. by filing a timely appeal to the Merit Systems Protection Board, if the underlying issue falls within its jurisdiction;
  2. by filing a complaint seeking corrective action with the Office of Special Counsel; or
  3. by filing a timely grievance under this Agreement.

An employee's election of one of these procedures is irrevocable and precludes the employee from subsequently electing either of the other procedures.

## SECTION 5

- A. Employees must use the grievance procedures set forth in this Article for filing and processing grievances concerning issues relating to this Agreement.

- B. During any of the steps indicated in this Article, the Parties may, by mutual agreement, hold a meeting in an effort to resolve the grievance. Such meetings will occur during the regularly scheduled workday of the individuals involved. In unusual circumstances and by mutual agreement, a meeting may take place outside of the regularly scheduled workday of the grievant.
- C. By mutual agreement, the Parties may use the grievance mediation process under the auspices the Federal Mediation and Conciliation Service (FMCS). Any fees charged by FMCS will be shared equally by the Parties.
- D. Failure on the part of the Employer to observe the time limits for any step in the grievance procedure will have the effect of the grievance being denied at that step, at which point the grievant may appeal to the next step. Failure on the part of the grievant or the Union to observe time limits for any step will have the effect of the grievance being nullified and not capable of being processed further. By mutual written consent of the Parties, the time limits in this Article may be extended and/or a step of the grievance procedure may be waived.
- E. It is understood that an employee processing a grievance under this Article is limited to Union representation or self-representation. If an employee presents a grievance without Union representation, the Union will be given the opportunity to be present as an observer during grievance discussions and/or discussions of resolution of the grievance.
- F. The Parties agree that any resolution of a grievance must be consistent with the terms and conditions of this Agreement. The Union agrees to respect and maintain the confidentiality of all information involving performance or conduct of individuals.
- G. Grievances may be initiated by an employee, by the Union for itself or on behalf of an employee, or by the Employer.
- H. If the Employer alleges that a grievance is not grievable and/or not arbitrable, the Employer will notify the grievant in writing, stating the reason(s) for such determination(s). If a question of grievability is raised, it will be joined to the grievance through the grievance procedure and decided at arbitration if not resolved prior to that time.
- I. When the Employer notifies the grievant that a grievance is not valid, the grievant may, within three (3) work days, revise the grievance. Upon revision, the grievance will be resubmitted at the level at which the issue was raised and proceed as a normal grievance. The grievant will be allowed only one (1) revision attempt. The Employer reserves the right to challenge grievability, arbitrability, and/or the validity of the revised grievance.
- J. Management agrees to provide a copy of all written decisions rendered on a grievance filed under this Article, to both the grievant and the employee Union representative.

## SECTION 6

A grievance must be submitted in writing and must include the following information:

- A. date submitted;
- B. name and signature of the grievant and her/his representative, if any;
- C. work organization and location of the grievant;
- D. sufficient detail to identify the basis of the grievance, including reference to pertinent Article(s) and Section(s) of the Agreement at issue, and general reference to any practice, law, rule or regulation alleged to be violated, misinterpreted, or misapplied;
- E. all known and alleged facts; and
- F. the specific personal relief sought by the employee and the Union, or by the Employer. An employee claiming compensatory damages for an alleged EEO violation must present that claim in writing at the first opportunity in the grievance/arbitration process, or the claim is forever waived.

Before it will release information protected by the Privacy Act concerning employee(s) on whose behalf the Union is grieving, the Employer must be provided with a written statement, signed by the employee(s) in question, authorizing release of such information.

## SECTION 7

As defined under Section 2 of this Article, a grievance by an employee will be processed in two steps, as follows:

- A. Step 1
  - 1. The grievance must be presented by completing the proper form and submitting it to the employee's immediate supervisor within twenty (20) days after the matter, issue, or incident out of which the grievance arose, or within twenty (20) days after the date the aggrieved employee became aware or should have become aware of the matter, issue, or incident giving rise to the grievance.
  - 2. The immediate supervisor will either serve as the Step 1 official or expeditiously forward the grievance to the Step 1 official designated by the Employer. If a grievance is forwarded to a different Step 1 official, the immediate supervisor will inform the Union and the employee who will be serving as the Step 1 official on that grievance. The Employer

has determined that, whenever feasible, the Step 1 official will have been involved in, or will have direct knowledge of the action that prompted the grievance.

3. Any grievance not submitted in writing within this time period will not be considered timely.
4. Issues or redress not raised at Step 1 of the grievance may not be raised by either Party at any subsequent stage or in arbitration.
5. The Step1 official will, upon written request, meet with the grievant within fourteen (14) days after receipt of the grievance. Those participating in such a meeting may include the Step 1 official, another official designated by the Employer, the grievant, and one Union representative. The Employer may elect to hold the meeting by telephone- or video-conference, particularly where a face-to-face meeting would require travel outside of the participants' commuting areas.
6. Within fourteen (14) days after the meeting, or within fourteen (14) days after submission of the grievance if no meeting is held, a written response will be provided to the employee (if self-represented) or the Union (if it is representing the employee). It will specify the reason(s) for the decision and designate who the Step 2 official will be, should the employee not be satisfied with the Step 1 decision.

**B. Step 2**

1. If the grievant is dissatisfied with the decision of the Step 1 official, the grievant may appeal to the Step 2 official designated by the Employer within fourteen (14) days of receipt of the Step 1 decision. If no Step 1 decision has been received, the Step 2 grievance appeal must be filed within fourteen (14) days of the date in which the decision at Step 1 should have been issued. In the latter case, the Step 2 grievance must be filed with the supervisor of the Step 1 official.
2. The Step 2 grievance must include a copy of the Step 1 grievance form and decision, along with a statement of the specific issue(s) in the Step 1 grievance which are unresolved and what remedy the grievant seeks for all such issues. A copy of the complete grievance package must be provided at the time of filing to the designated management official.
3. The Step 2 official may designate another official to respond to a grievance submitted under this Article, who will become the Step 2 official. Grievance officials will be designated by the Employer.

4. The Step 2 official will, upon written request, meet with the grievant within fourteen (14) days after receipt of the Step 2 grievance. Those participating in the meeting with her/him may include the grievant and one Union representative. The Employer may elect to hold the meeting by telephone- or video-conference, particularly where a face-to-face meeting would require travel outside of the participants' commuting areas.
5. Within fourteen (14) days after the meeting, or within fourteen (14) days after receipt of the Step 2 grievance if no meeting is held, a written decision will be provided to the Union. It will specify the reason(s) for the decision and designate who the Step 3 official will be, should the employee not be satisfied with the Step 2 decision.

C. Step 3

1. If the grievant is dissatisfied with the decision of the Step 2 official, the grievant may appeal to the Step 3 official designated by the Employer within fourteen (14) days of receipt of the Step 2 decision. If no Step 2 decision has been received, the Step 3 grievance appeal must be filed within fourteen (14) days of the date in which the decision at Step 2 should have been issued. In the latter case, the Step 3 grievance appeal must be filed with the supervisor of the Step 2 official.
2. The Step 3 grievance must include a copy of the Step 2 grievance form and decision, along with a statement of the specific issue(s) in the Step 2 grievance which are unresolved and what remedy the grievant seeks for all such issues. A copy of the complete grievance package must be provided at the time of filing to the designated management official.
3. The Step 3 official may designate another official to respond to a grievance submitted under this Article, who will become the Step 3 official. Grievance officials will be designated by the Employer.
4. The Step 3 official will, upon written request, meet with the grievant within fourteen (14) days after receipt of the Step 3 grievance appeal. Those participating in the meeting with her/him may include the grievant and one Union representative. The Employer may elect to hold the meeting by telephone- or video-conference, particularly where a face-to-face meeting would require travel outside of the participants' commuting areas.
5. Within fourteen (14) days after the meeting, or within fourteen (14) days after receipt of the Step 3 grievance if no meeting is held, a written decision will be provided to the Union.

## SECTION 8

- A. Grievances filed by the Employer against the Union will be filed with the Council President of AFGE within twenty (20) days after the matter, issue, or incident out of which the grievance arose, or within twenty (20) days after the date the Employer became aware or should have become aware of the matter, issue, or incident giving rise to the grievance, if later. If either Party requests, a meeting will be held within ten (10) days after filing.
- B. The Union will provide the Employer a written decision within twenty (20) days of the meeting. This will be a final grievance decision, subject to arbitration at the election of the Employer. The Employer must invoke arbitration within twenty-one (21) days of receipt of the Union's decision. Failure of the Union to issue a decision within twenty (20) days will be deemed a denial of the grievance, and the Employer may invoke arbitration no later than twenty-one (21) days from the date on which the Union's decision was due.
- C. Grievances against the Employer concerning the Union's institutional rights, not presented by or on behalf of an employee or group of employees, will be filed within twenty (20) days with the designated management official, who will submit each such grievance to the proper official and provide the Union with her/his name. If either party requests, a meeting will be held within ten (10) days at a designated office of the Employer. The Employer will provide a written decision within twenty (20) days of the meeting. This will be a final grievance decision, subject to arbitration at the election of the Union.
- D. The Union may file a national grievance over issues involving all bargaining unit employees represented by AFGE by filing the grievance with the designated management official within twenty (20) days of the time the Union became aware, or should have become aware, of the matter grieved. The grievance will be submitted to the proper official and the Union provided with her/his name. If either party so requests, a meeting will be held within ten (10) days at the headquarters office of the Employer. The Employer will provide a written decision within twenty (20) days of the meeting. This will be a final grievance decision, subject to arbitration at the election of the Union. The Union must invoke arbitration within twenty-one (21) days of receipt of the Employer's decision. Failure of the Employer to issue a decision within twenty (20) days will be deemed a denial of the grievance, and the Union may invoke arbitration not later than twenty-one (21) days from the date on which the Employer's decision was due.

## SECTION 9

- A. The Union may request in writing that the Employer provide such written information as is relevant to the subject matter of the grievance and necessary to its resolution. The Union will make a concerted effort to ensure that initial information requests are

submitted within ten (10) days from the filing of the grievance. The AFGE Council President will send an annual message to all Union representatives urging conformance with this standard, and that message will be posted permanently on the Union's web site.

- B. Pursuant to 5 U.S.C. 7114(b)(4), the requesting party must include the reasons that the information is necessary and demonstrate a particularized need.
- C. If the Employer declines such a request, it will respond in writing and state why the information will not be provided.
- D. If a dispute arises over access to information in connection with the grievance, it may be addressed through the filing of a unfair labor practice charge (ULP).

## SECTION 10

Either before or after a grievance is filed, the following Alternative Dispute Resolution (ADR) process may be followed, by mutual agreement:

- A. One or more meeting(s) may be arranged by the Union representative and the appropriate management official, at mutually agreeable time(s), to attempt to resolve the matter.
- B. A mediator will attend each meeting. The Parties may mutually agree to other participants, such as Union and management representatives or subject matter experts.
- C. If the matter is resolved, the settlement will be reduced to a formal written agreement and will be signed by the grievant, the Union's representative, and the Employer's representative. One provision in the settlement agreement must be that the grievance will be withdrawn.
- D. If the matter is not resolved through ADR, the grievance will continue through the grievance process. The grievant may resume the normal grievance process at any time during ADR, upon written notice to the participants.
- E. Offers to settle and aspects of settlement discussions will not be used as evidence or referred to if the grievance is not resolved by this process.



## **ARTICLE 39**

### **ARBITRATION**

#### **SECTION 1**

- A. Any unresolved grievances processed under Article 38, Grievance Procedures, may be appealed to binding arbitration upon written notification by the Union or by the Employer, as appropriate, unless otherwise provided in this Agreement. The request for arbitration must be made within twenty-one (21) days after receipt of the final decision by the Union representative or the employee as appropriate. If no final decision is issued, the arbitration may be invoked after a reasonable time (no later than 21 days) from the date the decision should have been issued.
- B. Invocations of arbitration must be served: 1) on the Employer's designated representative, if filed by the Union; or 2) on the AFGE Filed Representative if filed by the Employer, with a copy to the appropriate Local President. Arbitration is deemed to be invoked upon hand delivery, facsimile, or date of postmark, if mailed, to the appropriate party.

#### **SECTION 2**

- A. The Parties will select a permanent panel of three (3) arbitrators for hearing arbitration appeals filed by the Union or the Employer. The selection will be made within thirty (30) calendar days of the effective date of this Agreement by: 1) an official designated by the Employer, and 2) the Field Representative or his/her designee.
- B. If the Parties are unable to mutually agree on all arbitrators, they will submit a joint request to the Federal Mediation and Conciliation Service (FMCS) for a list of impartial persons qualified to serve as arbitrators. The number of names to be provided by the FMCS will be seven (7). If only one (1) arbitrator remains to be selected, the selection shall be made by alternately striking names until the requisite number of names remains on the list. A toss of the coin will determine who makes the first strike. Any fees charged by FMCS will be shared equally by the Parties.
- C. An arbitrator can be removed from the designated list of arbitrators unilaterally by either party during the life of the Agreement, by giving written notice to the other party and the arbitrator. Thereafter, no additional cases will be assigned to that arbitrator; however, he/she will hear and decide any case already assigned. At times when only one arbitrator remains to hear cases, that arbitrator cannot be removed until a replacement is selected by following the procedures set forth in Section 2.A and 2.B.
- D. Cases will be assigned to the designated arbitrators on a rotating basis, to be determined by the date arbitration is invoked.

#### **SECTION 3**

- A. Within 21 days following invocation of arbitration, the party invoking it will notify the arbitrator who is assigned the case and schedule the hearing to take place on a date mutually agreeable to all Parties. If the party invoking arbitration fails to contact the arbitrator within the 21 day period, the grievance will be considered withdrawn and may not be refiled. If within forty-five (45) days after arbitration is invoked the Parties have not agreed upon a hearing date, the arbitrator has unilateral authority to schedule the hearing.
- B. The arbitration hearing will be held on the Employer's premises during regular duty hours (day shift) of the basic workweek, unless the Parties agree otherwise. The arbitration will be held within the local commuting area of the grievant(s) unless the Parties mutually agree otherwise. Where appropriate, the Parties will consider the use of long-distance telephone and/or video-conferencing during the arbitration hearing for the taking of testimony of witnesses whose assigned duty station is outside the commuting area of the site selected.
- C. The grievant, the grievant's representative, and all employees who are approved as witnesses and who are in an active duty status, shall be excused from other assignments to the extent necessary to participate in the arbitration proceeding without loss of pay.
- D. A verbatim transcript of the arbitration shall be made (unless mutually waived). The cost of the transcript will be shared equally.
- E. The arbitrator has no power to add to, subtract from, disregard, alter, or modify any terms of this Agreement or the Employer's policy and regulations.

#### SECTION 4

- A. The procedures used to conduct the arbitration shall be determined by the arbitrator, except to the extent provided herein.
- B. By mutual agreement, the Parties may arrange for a pre-hearing conference, with or without the arbitrator, to consider possible settlement and means of expediting the hearing. For example, this can be done by reducing the issue(s) to writing, stipulating the facts, outlining intended offers of proof, authenticating proposed exhibits, and/or waiving the use of a transcript.
- C. If the Parties fail to agree on a joint submission of the issue for arbitration, each shall submit a separate statement of the issue(s). The arbitrator will then determine the issue(s) to be heard.
- D. Normally, the Parties agree to exchange a complete list of prospective witnesses at least fifteen (15) calendar days prior to the hearing. The Parties shall attempt to mutually agree on witnesses to testify at the hearing. To the extent the Parties cannot agree on appropriate witnesses, the Parties may either submit a list of disputed witnesses to the arbitrator at the hearing for a determination or request in writing prior to the hearing that the arbitrator make a determination as to those witnesses. In determining who shall appear, the arbitrator shall approve only those persons whose testimony will be material

to the matter in dispute and not repetitious of other testimony to be offered.

- E. The arbitrator shall have the authority to make all arbitrability and/or grievability determinations. To the extent possible, the arbitrator shall make grievability and/or arbitrability determinations prior to addressing the merits of the original grievance. The Parties are free to decide by mutual agreement to approach the arbitrator prior to the hearing for a ruling on the arbitrability question(s).
- F. Absent mutual agreement, the Parties will be entitled to submit pre-hearing and post-hearing briefs, provided that all documents given to the arbitrator are also provided to the opposing party's representative at the same time.

## SECTION 5

The arbitrator's fees and expenses, and the transcript costs shall be shared equally by the Parties, unless expressly stated otherwise elsewhere in this Agreement. It is understood that any per diem costs of the arbitrator are governed by applicable government travel rules and regulations and will be shared equally by the Parties. In any grievance where the Parties settle the matter prior to an arbitration hearing, both Parties will share equally any fees charged by the arbitrator. In the event a Party must cancel a scheduled hearing, the canceling Party is solely responsible for the arbitrator's cancellation fees.

## SECTION 6

- A. The arbitrator will strive to issue a decision within thirty (30) days from the close of the record. His/her award or recommendation shall be limited to the issue(s) stipulated to by the Parties or determined by the arbitrator pursuant to Section 4.C. of this Article.
- B. The arbitrator's written decision shall include findings of facts and an opinion containing the reasoning and basis for his/her decision on all issues which were heard.

## SECTION 7

- A. In any arbitration where the grievant is contesting his/her performance appraisal, the following will apply as to burden of proof. Where the employee challenges a final rating of record of "Unacceptable" the burden of proof shall be on the Employer in any arbitration to establish that the rating was proper.
- B. In all cases in which an employee challenges a final rating of record in a performance appraisal, the evidentiary standard shall be substantial evidence.
- C. This Section does not govern cases involving the denial of a within-grade increase.

## **ARTICLE 40**

### **EQUAL EMPLOYMENT OPPORTUNITY**

#### **SECTION 1**

The Parties agree that the Employer will not discriminate against any employee on the basis of race, color, national origin, age, sex, sexual orientation, disabilities, or religion. Toward this end, the Employer will administer an Equal Employment Opportunity (EEO) program in accordance with applicable laws and regulations. Under current policy, EEO complaints based upon sexual orientation may be pursued through the administrative process within the Department; current law does not permit that basis for discrimination to be pursued outside the employing Federal agency.

#### **SECTION 2**

A. EEO issues may be raised under this Agreement either through the negotiated grievance procedure, through the HHS-wide administrative EEO complaint process established pursuant to and in conformance with government-wide regulations of the Equal Employment Opportunity Commission (EEOC), or, in cases within its jurisdiction, in an appeal to the Merit Systems Protection Board.

B. Once an employee has elected one of these procedures, that election is irrevocable. The employee may not decide to change thereafter to a different procedure.

#### **SECTION 3**

The Employer will provide bargaining unit employees with access to trained EEO Counselors with whom they may meet or speak in connection with an EEO issue, in an effort to resolve the issue before pursuing a formal action complaining of discrimination on a protected basis.

#### **SECTION 4**

A. If an employee elects to pursue an allegation of discrimination in conjunction with a grievance under Article 38 of this Agreement (or, as pertinent, if the Union invokes arbitration on such issue because the grievance begins at that point under Section 4B of Article 38 of this Agreement), (a) the employee must declare on the grievance form at step 1, or (b) the Union must declare in the letter invoking arbitration if the matter being challenged causes the process to commence at that level, if the employee intends to claim compensatory damages as a form of relief in the grievance/arbitration process. Any compensatory damages claim not so declared at step 1 will be deemed to have been waived and is forever barred from being asserted later in processing of the grievance, during arbitration, and on any appeal by the employee of an adverse decision on the matter being grieved.

B. When a claim for compensatory damages is made by an employee in a step 1

grievance, s/he must provide sufficient evidence to support the claim, including the specific dollar figure sought as relief. The official, at any step if compensatory damages as relief needs to be addressed in her/his decision, may require the employee to submit additional evidence/explanation relevant to the claim and/or require sworn statement(s) addressing any aspect of the claim (whether in support or contravention of it). Any grievance official may conduct an inquiry into the evidentiary basis presented by the employee if that official will need to address the compensatory damages claim as relief on the grievance.

- C. If the underlying matter is not resolved, the grievance is denied at every step, and the Union invokes arbitration a period of at least 60 days for Employer discovery on any compensatory damages claim must be provided by the arbitrator. Responses to each discovery request must be provided to the Employer within 10 days of the employee's or the Union's receipt of the request, whichever receives it first. If the Union and/or the employee fail to cooperate with relevant and reasonable Employer discovery requests, the claim for compensatory damages: must be denied, irrespective of the decision on the underlying grievance and any other claims for relief.

## SECTION 5

A. An employee who files an EEO complaint through the Employer's administrative process and her/his designated personal representative if an agency employee are entitled to a reasonable amount of duty time in which to prepare and pursue the complaint at the administrative level. This time must be requested and approved in advance by the applicable supervisor(s).

B. Generally, with advance approval, the employee and her/his designated personal employee-representative may use up to eight (8) hours of duty time for preparation through the counseling and investigation phases of the EEO process, combined. Thereafter, if the employee requests a hearing on the complaint before the Equal Employment Opportunity Commission (EEOC), the employee and her/his designated personal employee-representative may use up to twenty-four (24) hours of duty time to prepare the case at the hearing stage. The employee and her/his designated personal employee-representative may use up to eight (8) hours of duty time to prepare and present any appeal(s) filed with the EEOC.

C. The employee and her/his designated personal employee-representative will be on duty time, not subject to the reasonable time limitations set forth in subsection B above, during the EEOC hearing, any officially-designated alternative dispute resolution process, and meetings/conferences set by the EEOC Administrative Judge, and when compelled by the Agency Representative to be present for pre-hearing events (e.g., the complaining employee's deposition).

## SECTION 6

A. *Disabled person* is defined for purposes of this Agreement as one who:

1. has a physical or mental impairment which substantially limits one or more of such person's major life activities;
  2. has a record of such impairment; or
  3. is regarded as having such an impairment.
- B. *Qualified person with a disability* means, with respect to employment, a person with one or more Impairment(s) who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others and who, depending upon the type of appointing authority being used:
1. meets the experience and/or education requirements (which may include passing a written test) of the position in question; or
  2. meets the criteria for appointment under one of the special appointing authorities for persons with disabilities.
- E. The Employer agrees to make information available to employees concerning the services provided by any applicable HHS or OPDIV disability program coordinator and/or selective placement coordinator, Reasonable Accommodation Specialist, or Human Resources Specialist.
- F. It is the policy of the Employer to make reasonable accommodation to the known physical or mental limitations of qualified applicants or employees with disabilities, consistent with the law in effect at the time the accommodation is sought and as such law is then interpreted by governing judicial authorities, unless it can demonstrate that the accommodation would impose an undue hardship on the operation of agency programs. Appropriate reasonable accommodation may include, but is not limited to, the provision of readers, interpreters, and assistive devices and/or personnel. The Employer will respond to an employee's request for reasonable accommodation within fifteen (15) days of receipt of the request in the DNHDP Director's office. If additional time is necessary to respond to the request, the reasons for the delay and the approximate timeframe for the response will be provided to the employee. If the request for reasonable accommodation is denied in full, the reason(s) for the denial will be provided to the employee in writing.
- G. The Employer affirms its commitment to a work environment that is free of architectural barriers.

## SECTION 7

- A. When an employee requests a change in duty status, assignment, or working

conditions, or any other benefit, special treatment, or accommodation based on medical reasons, the employee will submit a request in writing to her/his supervisor, along with medical documentation in support of the request. The documentation will be limited to the specific information necessary for the Employer to make a determination regarding the validity of the employee's request. In the event the medical documentation submitted is inadequate for the Employer to make a sound and informed decision, the Employer may request that the employee provide additional medical documentation in accordance with 5 C.F.R. Part 339. It is the employee's option to provide the requested information; however, if sufficient medical documentation to support the request is not provided, the Employer may not approve the request. The Employer retains responsibility for either granting requests in their entirety, granting requests in modified form, or denying requests, as appropriate.

## SECTION 8

A. Pursuant to 5 C.F.R. 213.3102(t) and (u), an employee with a disability on a Schedule A excepted appointment may be converted from excepted status to competitive status after two (2) years of continuous service in such an appointment if s/he is performing satisfactorily. Any such conversion will be based on supervisory recommendation and is not mandatory for retention in position; however, there should be substantial justification for not recommending conversion of an employee who meets the minimum service requirement and who has demonstrated successful job performance.

B. Upon request, such Schedule A employees will be notified in writing when they are not converted. The written notice will contain:

1. the reason(s) why the employee was not converted; and
2. notice that the employee is not prohibited from being converted later, if appropriate.

## **ARTICLE 41**

### **EMPLOYEE ASSISTANCE PROGRAM**

#### **SECTION 1**

The Employer agrees that, to the extent possible based on funding and staffing limitations, it will operate an Employee Assistance Program (EAP). This program will offer short-term and crisis-oriented counseling for employees experiencing problems in the areas of alcohol abuse, drug abuse, emotional/behavioral and/or health problems, and/or certain family situational problems. If this program is to be discontinued due to funding and staffing limitations, the Employer will notify the Union and negotiations may take place in accordance with this Agreement. The employer provides an EAP that is consistent with the requirements found in HHS Personnel Instruction 792-2.

#### **SECTION 2**

The Employer and the Union, jointly and/or independently, will take action to encourage employees to seek EAP counseling for apparent problems of a nature covered by the program. The Employer will offer information to all Union representatives on the basic operating principles of the program.

#### **SECTION 3**

- A. EAP consultation(s) will be approved by the Employer on duty time or as excused absence, provided the employee informs her/his leave-approving official that the requested time away from the office will be used for EAP consultation. The employee need not provide further details to the official.
- B. Employees may request to use sick leave, annual leave, leave without pay, credit hours, and/or earned compensatory time, consistent with applicable provisions of this Agreement, for purposes of undergoing a treatment program resulting from a referral by an EAP Counselor. Such leave requests will be approved or denied on the same basis as for any other request which necessitates absence from work.

#### **SECTION 4**

- A. Counseling records and information related to employee visits to EAP will be kept in a confidential manner consistent with applicable laws and regulations in effect at the time.
- B. Confirmation of attendance, when necessary, will be provided by the EAP according to applicable confidentiality procedures. Employees who do not want their supervisors to know of their attendance must arrange appointments outside official duty time or while on annual leave.



C. Because the Employer is not directly responsible for overseeing the counseling arranged or provided by EAP contractors, the parties agree that issues related to this Article cannot be grieved.

## SECTION 5

The Employer will issue an annual notice to employees that explain the EAP, the assistance offered, and its benefits.

## **ARTICLE 42**

### **HEALTH AND SAFETY**

#### **SECTION 1**

- A. The Employer will provide a safe and healthy work environment for employees.
- B. The Employer will adopt within its facilities the applicable standards of the Occupational Safety and Health Administration (OSHA).
- C. Behavior that is considered threatening or intimidating and /or violence in the workplace are unacceptable forms of conduct and will not be tolerated.

#### **SECTION 2**

- A. Each employee has a responsibility for her/his safety and an obligation to observe established health and safety rules and policies as a measure of protection for her/himself and others. Employees will not engage in willful misconduct that causes or will likely cause the Employer to be in violation of any rule, regulation, order, permit, or license issued by a regulatory authority. Each employee will become familiar with and observe health- and safety-related policies and procedures and guidelines issued by the Employer, which are applicable to the employee's own actions and conduct. If the Employer provides employees with safety equipment, personal protective equipment, or any other devices including exposure monitoring equipment, and procedures that the Employer considers to be necessary to ensure employee protection, each employee will use or wear such equipment as directed by the Employer. In the course of performing their assigned work, employees will be alert to the presence of unsafe or unhealthy conditions. Employees will attend mandatory safety training provided by the employer. When such conditions are observed, it is the employee's right and responsibility to report them to supervisory personnel and/or facility safety and health personnel. Where an employee has notified the employer of an unsafe condition, the employer will look into the matter as appropriate. The employer will notify the Union of the results, if any, and give the Union an opportunity to be present during any formal discussions between the employer and employee pertaining to a safety or occupational health hazard.
- B. Copies of health and safety reports in the possession of the Employer will be made available to the Union, upon specific request, in accordance with law and regulations.
- C. In imminent danger situations, employees or the Union will make reports to the Employer by the most expeditious means available. The term "imminent danger" means any conditions or practices in any workplace where a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the immediate danger can be eliminated through normal procedures. In such situations, an employee may decline to perform assigned tasks in the usual work area

when s/he has a reasonable belief that, under the circumstances, the task or area poses an imminent danger. However, in these instances, the employee must report the situation to his/her supervisor, another supervisor who is immediately available, and/or facility safety and health personnel. After making the report, the employee may leave the affected work area but must hold her/himself available for work under appropriate working conditions in another work area. If these procedures are strictly followed, the employee will continue to be paid as long as s/he remains available to, and does if requested, perform any work as directed by the Employer. An employee who abuses these procedures may be subject to disciplinary action.

### SECTION 3

The employer will take steps on at least an annual basis to ensure that employees are familiar with the proper emergency procedures. When emergencies occur, the Employer will take all steps necessary to ensure employee safety. The Union will assist in this by encouraging its members to follow established procedures and by having its representative's serve as wardens/monitors/coordinators after appropriate training has been provided.

### SECTION 4

- A. The Employer will provide employees, when practical, with information concerning the nearest medical service facility/clinic where emergency medical services are provided, and the procedures to use to contact the local emergency management system (e.g., paramedics, fire departments, police departments, ambulance services, etc.). Employees should also assume personal responsibility for taking appropriate steps to inform themselves about emergency services and procedures.
- B. On at least an annual basis, the Employer will assess available local resources for training on the techniques of cardiopulmonary resuscitation (CPR) and automatic external defibrillators (AED), the costs for training which is available, and the level of interest of its employees in that geographic location for such training. Consistent with the employees' expressed interest level in each geographic area and the funding available to provide CPR/AED training to interested employees, the Employer will arrange for such training in an appropriate form and setting (e.g., within an OPDIV/STAFFDIV, in combination with other OPDIVs of HHS, or on a multi-agency basis). If the Employer asserts that no funding is available, it will inform the Union as to why. Reasonable efforts will be made to provide the opportunity for such training during employees' regular duty hours. The Employer will encourage its employees to take advantage of CPR/AED training opportunities.

If the local facility emergency action plan contains provisions for publicizing the names and locations of CPR/AED trained employees, the employee must first give permission to the Employer to publicize his or her name.

- C. Other health promotion and disease prevention information will be made available by appropriate means.

- D. The Employer will provide the local Union chapter with the name of any agency safety officer or other contact person for health and safety matters and, upon request, the location and availability of any relevant resource materials.

## SECTION 5

- A. The Employer will comply with all government-wide regulations relating to health benefit coverage for employees and open season procedures.
- B. The Employer will furnish to employees, as early as practicable during open season, with the information on electronic sources for materials relating to health benefit coverage, including, when available, the open season instructions, a list of the benefit rates for all OPM-approved health benefit plans for which employees qualify (including any plan offered by the Union), and all summaries of coverage (both in cross-plan comparison and plan-specific formats, if available) provided by OPM.
- C. The Employer will make available hard copies of each OPM-approved health plan for which employees qualify only in locations where electronic access is impossible.

## SECTION 6

Advance notice will be provided to employees regarding the use of chemicals or other irritants, such as paint or pesticides, that are going to be used in its buildings as soon as practicable after the Employer becomes aware of such use. This notice will also include any warning statements and Material Safety Data Sheets given to the Employer or its agents by the organization applying such materials. Where there is reasonable likelihood of harm due to application of such materials, employees will be directed to move to another work area until their area is determined to be safe for use.

## SECTION 7

All HHS owned, leased or occupied facilities are designated as Tobacco-free.

## SECTION 8

- A. Joint labor-management Health and Safety Committees, with equal representation, may be established in DNHDP. The Committees' functions and procedures may include studying health and safety problems and pursuing recommendations for their resolution to appropriate officials.
- B. Health and Safety Committee members will be given necessary training concerning the rules and framework under which they operate. Health and Safety Committees may make recommendations to the Employer concerning improving the safety of employees.

## SECTION 10

- A. Employer drug testing will be carried out in accordance with all applicable laws and government-wide rules and regulations, including but not limited to, Executive Order 12564, Pub.L. 100-71, section 503, and Pub.L. 100-440, section 628. The methods and procedures used for drug testing will be in accordance with the HHS Drug-Free Workplace Drug Testing Program.
- B. Employees subject to random drug testing are those who are in sensitive testing designated positions (TDPs). Applicants for TDPs are also subject to drug testing. The designation of a TDP is made in accordance with applicable laws, rules, and government-wide regulations.
- C. Test results will be protected under the provisions of the Privacy Act of 1974, 5 U.S.C. sections 552a, and Pub.L. 100-71, section 503. Employees subject to drug testing will, upon written request, have access to any records relating to their drug test(s).

## SECTION 11

- A. The Employer will assure that each building or work area occupied by unit employees has an annual safety and health inspection. When feasible, the Employer will give at least one (1) workday advance notice of the date the inspection is scheduled. Such notice will provide the time and place where the inspection will begin. Prior to the scheduled inspection, the Union will notify the Employer of either the name of its representative who will be present or its intent not to participate. When this designated Union representative is an employee, the representative may observe the inspection without charge to leave.
- B. A copy of any official health and safety report in the possession of the Employer will be made available to the Union, upon specific request, in accordance with law and regulations.

## **ARTICLE 43**

### **FITNESS-FOR-DUTY PHYSICALS** (Medical Determinations Related to Employability)

#### **SECTION 1**

- A. Fitness for Duty Examinations: The Employer may direct an employee to undergo a fitness-for-duty examination only under those conditions authorized in prevailing OPM regulations (currently found at 5 C.F.R. Part 339) at the time the examination is requested or ordered.
- B. Office of Workers Compensation Programs: The procedures in this article are not designed to address benefit claims filed with the Department of Labor, Office of Workers Compensation Programs (OWCP), for alleged job-related injuries. Employees filing such claims must adhere to the OWCP rules, regulations, and policies.
- C. Medical Requirements for Certain Positions: When an individual is hired for a position which is subject to physical safety requirements and/or medical standards, the Employer will follow the requirements and procedures in OPM regulations and any supplemental HHS or OPDIV policies in effect at the time of the hiring in assessing whether the prospective employee satisfies those requirements and/or standards. If the Employer has reason to believe that the employee no longer meets such requirements and/or standards at a subsequent point in time, it will similarly adhere to the OPM regulations and any supplemental HHS or OPDIV policies in effect at the time in order to determine whether the employee still meets the necessary requirements/standards for employment in that position.

#### **SECTION 2**

When the Employer orders or offers a medical examination under the provisions of the OPM regulations, it will inform the employee in writing of its reasons for ordering or offering the examination and the consequences of failure to cooperate. Except in emergency situations, an employee is entitled to at least seven (7) days advance written notice that s/he is to take a fitness-for-duty examination or psychiatric examination. In the event that the employee is requested to set up an appointment, s/he will be allowed reasonable time to do so. The notice will set forth the reasons for the examination (including the behavior the Employer has observed), and the general scope and character of the examination.

#### **SECTION 3**

- A. Employees directed to take a fitness-for-duty examination will have an opportunity to submit the names of three (3) physicians located in the commuting area to be considered for conducting the examination.

- B. The Parties recognize that, pursuant to 5 C.F.R. 339.303(b), the Employer retains the authority to designate the examining physician.

#### SECTION 4

In the event a physician not suggested by the affected employee is designated to conduct the examination, any medical documentation submitted by the employee's personal physician will be reviewed and given due consideration by the Employer. In addition, the Employer will furnish such medical documentation to the designated examining physician.

#### SECTION 5

The Employer will provide the examining physician with a copy of the applicable standards and requirements for the position, and/or a detailed position description of the duties of the position, including critical elements, physical demands, and environmental factors.

#### SECTION 6

Under governing regulations, the Employer may order a psychiatric examination (including a psychological assessment) after an Employer-ordered general medical examination indicates no physical explanation for behavior or actions which may affect the safe and efficient performance of the employee or others.

#### SECTION 7

Medical examinations under this Article must be conducted in accordance with accepted professional standards by a licensed practitioner or physician authorized to conduct such examinations.

#### SECTION 8

The Employer will pay all costs for the examination(s) of employees which it orders or offers under the provisions of this article. Employees must pay for medical examinations conducted by a private physician or practitioner where the purpose of the examination is to secure a benefit sought by the employee such as but not limited to a request for a reasonable accommodation or advance sick leave.

#### SECTION 9

The report of an examination conducted pursuant to this Article will be available to the employee pursuant to 5 C.F.R. 293.504(b) and 5 C.F.R. 297.205.

## **ARTICLE 44**

### **PERSONNEL SECURITY ISSUES**

#### **SECTION 1**

- A. The parties recognize that the Employer has the right to determine the internal security practices of the Agency.
- B. The Employer retains the right to review and determine whether current security measures are adequate and consistent with the requirements of existing laws, regulations, Executive Orders and internal security policies, including but not limited to, 5 CFR Part 731, E.O. 10577 (as amended), HSPD-12, and HHS security policies
- C. The Employer retains the right to issue identification badges/cards and to have electronic or other state of the art tools embedded on or inside the cards for security purposes.
- D. The Employer will post specific applicable background investigation and security clearance requirements on all vacancy announcements, including the need for a credit check, the minimum background investigation required for the position, and indicate that favorable adjudication of the background investigation, and granting the required security clearance if applicable, is a condition of employment.
- E. The Employer will notify impacted employees of any changes in background investigation requirements (including new or updated forms) for their current positions and of any implication on their employment as far in advance of the effective date as practicable, but not less than thirty (30) days.
- F. The Employer will provide employees falling under section E above thirty (30) days to complete any required background investigation forms. Employee requests for extensions in time to complete the forms will be considered on a case-by-case basis.

#### **SECTION 2**

- A. If an employee's background investigation can be favorably adjudicated by the Personnel Security staff without supervisory input, the supervisor will not be provided any information on issues that are contained in the investigative report other than it contained non-disqualifying issues.
- B. If the employee's investigation has potentially disqualifying or disqualifying issues, the supervisor shall be included in the adjudication process and provided information consistent with the employee's release statement on the SF-85/85P/86 and the supervisor's need to know.



- C. Background investigations will be conducted in a manner that balances the employee's right to privacy with the government's need to know information in order to make a suitability determination. The investigation will be consistent with existing law, regulation, and policy.
- D. The parties recognize that if medical information is required for a background investigation for a public trust position, the investigator will contact the employee for a separate medical release that specifies the questions that will be asked.
- E. Employees who are potentially identified as unsuitable for the security/suitability requirement of their position will be provided written notice of the specific reasons and to whom a request for expedited review is to be directed.
- F. The employee may request an expedited review of his/her case prior to final decision on their suitability for their position. The employee must request such review within five (5) workdays after receiving the written notification. To the extent practicable, the employee's supervisor who was involved in the adjudication will not conduct the review or make the final decision on suitability. The employee will have the opportunity to present written and/or oral response, with supporting documentation, to all disqualifying information obtained during the background investigation. The employee will have the right to union representation during any expedited review.
- G. The review will normally occur within ten (10) workdays of the employee's receipt of the initial determination. Reasonable requests for extensions of these timeframes will be considered. The Employer's decision regarding suitability is final.
- H. If an employee does not meet the suitability or security requirements of his/her position, the Employer will make reasonable, good-faith effort to place him/her in a vacant position available to be filled for which they are suitable and qualified.

### SECTION 3

An employee who is terminated due to security requirements may appeal that termination pursuant to 5 C.F.R. Part 731 or 752, as appropriate.

### SECTION 4

Nothing in this article may be construed as infringing upon the authority of the Office of Personnel Management pursuant to federal law and 5 C.F.R. Part 731.

## **ARTICLE 45**

### **SPACE/OFFICE MOVES**

#### **SECTION 1**

- A. The Parties agree that when the physical movement of individuals or organizational groups of bargaining unit employees may be necessary due to a reorganization, or to promote the efficiency of operations and/or the efficient use of allocated office space; the Employer will notify the Union in advance of the change if required under Article 5, Midterm Bargaining and applicable law.
- B. If the move will result in a significant change in working conditions, the Employer will normally, include a proposed floor plan reflecting the changes as well as a move schedule, list of impacted employees, and reasons for the move along with the notice. The Employer retains the right to assign space/seating to bargaining unit employees based on function. Within the functional groupings, the Employer may further assign space/seating based on grade and seniority based on service computation date (SCD).
- C. Newly constructed or renovated space will meet HHS space management and applicable OSHA requirements.

## **ARTICLE 46**

### **TOBACCO FREE HHS**

The agency, as part of its mission to promote healthy practices, has decided that all buildings occupied by HHS employees whether owned and/or leased and space immediately surrounding the building shall be free of tobacco products. This means that no tobacco product, including but not limited to snuff, cigars, cigarettes, or any other product containing tobacco, may be used by employees inside the building or within 50 feet immediately surrounding the building. This section does not apply inside private cars or in parking garages more than 50 feet from the building.

The HHS Policy issuance with respect to this Article entitled “Prohibition of Tobacco Use in HHS-Occupied Facilities” and HRSA adoption of that policy are hereby incorporated by reference and appended to this Agreement as (Appendix 7 (46-1, 46-2)). To the extent that there is a conflict between the policies and this Article, the HHS policy shall prevail over this Article.

HHS is committed to assist employees who wish to utilize cessation programs to stop the use of tobacco products. These programs are sponsored by the Agency with no cost to the employee. Interested employees are encouraged to contact the appropriate office to enroll in a cessation program. Contact information is as follows:

- Call (206) 615-2511
- Send an email to [aengelstad@psc.gov](mailto:aengelstad@psc.gov).

## **ARTICLE 47**

### **LABOR-MANAGEMENT CONSULTATION MEETINGS**

**MEMBERSHIP:** The Labor-Management Consultation Council will be comprised of full members. Full standing members are three (3) members chosen by DNHDP and (3) members chosen by AFGE Local 3553.

Subject matter experts will be invited to attend meetings as required, to provide pertinent information.

**GENERAL GUIDELINES:** Meetings will be conducted professionally according to the following guidelines:

- A. Meetings will be co-chaired by a labor representative and a management representative, selected by each respective party.
- B. Meetings may be held quarterly as agreed by co-chairs. Issues addressed by the Labor and Management Consultation Council will include information concerning Department decisions that may impact DHNDP bargaining unit employees.
- C. Agenda items will be submitted to the co-chairs two weeks prior to the meeting with background information as appropriate.
- D. Individual union grievances shall not be discussed but general topics which could lead to grievances may be addressed.
- E. A quorum of at least two representatives from labor and two representatives from management shall be required to make decisions on issues discussed.
- F. Decision making will be by consensus. The co-chairs will determine when discussions are complete. If consensus fails to be reached, the co-chairs will decide whether to:
  - a) appoint a team to study the issues and provide recommendations to the Council or;
  - b) table the issue(s).
- G. Meetings will be conducted in a manner that promotes mutual respect, open dialogue and discussion.
- H. The Labor Relations Specialist or an acceptable representative will take notes and record action items at the meetings.

# APPENDIX 1

# PLACEHOLDER

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# APPENDIX 2

## ALTERNATIVE WORK SCHEDULE (AWS) APPLICATION

(all governing procedures and core hours and bands are pursuant to Article 21 AFGE CBA)

NAME (please print): \_\_\_\_\_

I REQUEST THE FOLLOWING WORK SCHEDULE (Please check one):

☐ **FLEXITOUR** (8 hours a day, 40 hours a week, and 80 hours biweekly), with fixed arrival/departure times.

Monday ARRIVAL TIME: \_\_\_\_\_ a.m. DEPARTURE TIME: \_\_\_\_\_ p.m.

Tuesday ARRIVAL TIME: \_\_\_\_\_ a.m. DEPARTURE TIME: \_\_\_\_\_ p.m.

Wednesday ARRIVAL TIME: \_\_\_\_\_ a.m. DEPARTURE TIME: \_\_\_\_\_ p.m.

Thursday ARRIVAL TIME: \_\_\_\_\_ a.m. DEPARTURE TIME: \_\_\_\_\_ p.m.

Friday ARRIVAL TIME: \_\_\_\_\_ a.m. DEPARTURE TIME: \_\_\_\_\_ p.m.

☐ **FLEXITIME** (8 hours a day, 40 hours a week, and 80 hours biweekly). Arrival and departure times may vary daily within flexible bands.

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☐ **COMPRESSED WORK SCHEDULES (CWS)** (check one of the following compressed work schedule). Arrival and departure time is fixed.

☐ **5-4/9 Plan**

ARRIVAL TIME: \_\_\_\_\_ a.m. DEPARTURE TIME: \_\_\_\_\_ p.m.

DAY OFF: \_\_\_\_\_ [WEEK 1 \_\_\_\_ OR WEEK 2 \_\_\_\_]

8 HOUR DAY: \_\_\_\_\_ [WEEK 1 \_\_\_\_ OR WEEK 2 \_\_\_\_]

☐ **4-10 Plan**

ARRIVAL TIME: \_\_\_\_\_ a.m. DEPARTURE TIME: \_\_\_\_\_ p.m.

DAY OFF: \_\_\_\_\_ IN WEEK 1

DAY OFF: \_\_\_\_\_ IN WEEK 2

By signing this application, I understand and agree to abide by the applicable provisions of Article 21 of the Collective Bargaining Agreement between AFGE and HHS.

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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Approved ☐ Disapproved ☐ Effective date: \_\_\_\_\_

Approved with condition(s)/modification(s) ☐

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Supervisor's Signature:

\_\_\_\_\_

Reason(s) for disapproval:

\_\_\_\_\_

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# APPENDIX 3A

## TELECOMMUTING PROGRAM POLICY

990-1-00	Background
990-1-10	Purpose
990-1-20	References
990-1-30	Definitions
990-1-40	Coverage and Exclusions
990-1-50	Roles and Responsibilities
990-1-60	Eligibility Criteria for Program Participation and Termination
990-1-70	Delegations of Authority
990-1-80	Labor Management Relations
990-1-90	Telecenters
990-1-100	Hoteling

### **990-1-00 BACKGROUND**

Advances in telecommunications, the rising costs of office space, growing air pollution, traffic congestion and changing social needs have increased interest in telecommuting arrangements. Telecommuting is a practical solution to these quality of life issues as well as work life challenges. Public Law No. 990-346, Section 359, dated October 23, 2000, as interpreted by the Office of Personnel Management (OPM) in a memorandum dated February 9, 2001, instructs Federal agencies (1) to review existing telecommuting policies to reduce and eliminate barriers that inhibit the use of telecommuting and to increase program participation, (2) to establish eligibility criteria, and (3) that subject to any applicable agency policies or bargaining obligations, employees who meet the criteria and want to participate must be allowed that opportunity if they are satisfactory performers. The law provides that its requirements must be applied, within four years, to 100% of the Federal workforce. More specifically, the law requires that 25 percent of an agency's eligible employees shall be participating in a telecommuting program this year, and an additional 25 percent of the eligible employees each year to reach 100% within four years.

### **990-1-10 PURPOSE**

This policy provides implementing guidelines for carrying out the requirements of Section 359 of Public Law 990-346 cited above. These implementing guidelines apply to the establishment of telecommuting programs in HHS. Our intent is to actively promote telecommuting as a legitimate flexibility for managers and their employees throughout HHS and at the same time optimize the benefits of telecommuting while assuring continued productivity. In addition, the purpose of this policy is to promote HHS as an employer of choice; enhance the Department's efforts to employ and accommodate people with disabilities, including employees who have temporary or continuing health problems, or who might otherwise have to retire on disability; reduce office space, parking facilities, and

transportation costs, including costs associated with payment of the transit subsidy; complement the Continuity of Operations Program (COOP) plans; and improve the recruitment and retention of high-quality employees through enhancements to the employees quality of life. Any implementing guidance developed by HHS components must comply with this policy, as well as the law from which it is derived.

## **990-1-20 REFERENCES**

- A. Public Law No. 106-346, Section 359, dated October 23, 2000
- B. Office of Personnel Management (OPM) Memorandum dated February 9, 2001, Establishing Telecommuting Policies
- C. OPM Telework website: [www.telework.gov](http://www.telework.gov)

## **990-1-30 DEFINITIONS**

- A. Telecommuting. (Also referred to as "flexiplace," "work-at-home," "flexible workplace," and "teleworking") Performing work at a place other than the employee's official duty station in accordance with the terms of an employee-employer agreement.
- B. Regular telecommuting. Telecommuting where the work is performed on a regularly scheduled basis for a period of several months or longer. Reasons for initiating regular telecommuting agreements may include: to enhance mission accomplishment; to improve service to clients; to improve productivity; to attract and retain high-quality employees in key occupations; to reduce office space and associated costs; to improve access to federal employment for the disabled; to assure reasonable accommodation for disabled employees; and, to reduce commuting distance.
- C. Non-Regular or episodic telecommuting. Work performed at an alternate work station without a regular schedule. Some examples where non-regular or episodic telecommuting arrangements may work well include: time to complete discrete portions of projects or work assignments; convalescence from an injury or illness; during office renovation; and, reasonable accommodation. All of these situations involve performing work at an alternate work station that cannot be performed at the permanent work station for the reasons stated earlier.
- D. Hoteling. Offices and/or cubicles set aside for the shared use of employees who spend the majority of their time telecommuting.
- E. Alternate Work Station. A specific area at a telecommuting center or within an employee's residence or at another approved location other than the official duty station.
- F. Telecenter. Office space, located so as to reduce commuting, that is available for the use of telecommuters.

- G. Official Duty Station. The current work location specified in the employee's Official Personnel Folder. Telecommuting does not change the Official Duty Station.

#### **990-1-40      COVERAGE AND EXCLUSIONS**

- A. This policy applies to all HHS employees except Public Health Service Commissioned Corps personnel. Commissioned Corps personnel should refer to HHS Commissioned Personnel Manual 23.5, Instruction 10 for guidance.

#### **990-1-50      ROLES AND RESPONSIBILITIES**

- A. Operating Divisions (OPDIVs) and Staff Divisions (STAFFDIVs) are responsible to:
1. Establish written guidance for implementing telecommuting requirements to include: Reimbursement for business-related long distance phone calls over the employee's personal phone-such calls must be approved by the supervisor as required by GSA regulations (see 41 CFR 101.7) and service and maintenance of Government-owned equipment if applicable.
  2. Review positions, using OPM and GSA guidelines, to identify positions that lend themselves to telecommuting, as well as those that do not.
  3. Approve, disapprove employee requests to participate in telecommuting and terminate program participation, when necessary, due to performance issues, for cause or other reasons as stated in the OPDIV/STAFFDIV telecommuting guidance.
  4. Maintain signed copies of telecommuting agreements and such other records as may be required for program evaluation and reporting of regular and episodic telecommuting, use of telecenters etc.
  5. Provide training for managers, supervisors and employees on the OPDIVs/STAFFDIVs telecommuting programs including the applicability of the Military Personnel and Civilian Employees Claims Act, the Federal Tort Claims Act, or the Federal Employees Compensation Act to services performed at home. (See Publication CA-810 Revised January 1999, Injury Compensation for Federal Employees, U.S. Department of Labor, Employment Standards Administration, Office of Workers' Compensation Programs).
  6. OPDIVs/STAFFDIVs shall designate a telecommuting coordinator to serve as the focal point for questions on the OPDIV/STAFFDIV telecommuting guidance.
- B. In consultation with the OPDIV/STAFFDIV Information System Security Officer assures that:
1. The requirements of the HHS IRM Policy for IT Security for Remote Access (dated January 8, 2001) are incorporated into telecommuting access briefings and training programs.
  2. The Departmental IT Security Officer is promptly notified of computer security incidents (or suspected incidents) resulting from remote access.

3. Security procedures for LAN access; policies on providing computer equipment, and policies regarding maintenance and software for the alternate work station are discussed with telecommuting participants and/or included in the telecommuting agreement.
- C. Employees are responsible for:
  1. Participation - The employee must request to participate in the telecommuting program; the employee may also request to end participation, without cause, at any time.
  2. Notice to Employer - The employee will promptly inform the employer whenever problems arise which adversely affect his/her ability to perform work at the alternate work station.
  3. Work Schedule - The employee must be available upon reasonable notice (generally a day in advance, if feasible) to come to the official duty station whenever the need arises for meetings, travel, training, etc.
  4. Work Activities - The employee will not engage in any non-governmental activities while in official duty status at the alternate duty station. This includes such pursuits as child care, elder care or the conduct of personal business.
  5. Leave - The employee will follow established leave policies at the alternate work station as though he/she were at the official duty station.
  6. Telephone - The employee agrees to maintain a telephone contact at his/her alternate work station and to furnish the employer with the number so that during business hours, he/she is accessible.
  7. Conduct - The Employee shall adhere to the Standards of Conduct for Executive Branch employees and to supplemental standards, as issued, while working at the alternate work station.
  8. Equipment Use- The employee must assure that all Government-owned equipment is used only for authorized purposes.
  9. Security - The employee will follow standard security procedures when removing official records from the official duty station. Classified or sensitive data must not be accessible from off-site locations unless agency IRM security officials certify that the system adequately protects records, and that off-site use conforms to applicable laws or policies.
  10. Safety - The employee will read, certify and sign such safety checklists as may be required by the OPDIV/STAFFDIV.
  11. Liability - The employee will be liable for damage to any government-supplied property, including equipment at the alternate work station, in the same way the employee is liable at the official duty station. HHS will not be liable for damages to an employee's personal or real property during the course of performance of official duties or while HHS equipment is in use at the employee's residence, except to the extent HHS is held liable by the Federal Tort Claims Act, the Military Personnel and Civilian Employees Claims Act or the Federal Employees Compensation Act (workers' compensation).

12. Costs - Generally, the Government will be responsible for the service and maintenance of Government-owned equipment. The employee is responsible for all operating costs, home maintenance and any other incidental costs (e.g., utilities) associated with the use of the home for business purposes.

**990-1-60      ELIGIBILITY CRITERIA FOR PROGRAM PARTICIPATION AND TERMINATION**

- A. When developing telecommuting guidance OPDIVs/STAFFDIVs must establish eligibility criteria for program participation and termination. Participation in telecommuting programs is not an entitlement. In establishing eligibility criteria, OPDIV/STAFFDIV programs must include:
  1. The employee's work (or the portion to be performed at the alternate work station) must be portable: i.e., it must be work that the employee can reasonably complete at an alternate work station.
  2. The supervisor must be able to evaluate the quantity and quality of the employee's work performed at the alternate work station.
  3. The employee's most recent performance rating of record must be a rating of fully successful or equivalent or better. The employee must not be on a performance improvement plan.
  4. An employee's performance is not maintained at the fully successful or equivalent level or better the employee-employer telecommuting agreement must be terminated.
  5. The employees' type and length of appointment, and work schedule must be included among those determined by the OPDIV/STAFFDIV to be eligible for participation.
  6. The employee must not require close supervision in order to telecommute.
  7. The employee must not require frequent input from others in order to perform tasks at the alternate work station.
  8. The employee's absence from the official duty station must not unduly interrupt office operations.
- B. Management officials with delegated authority may terminate a telecommuting agreement if the work situation no longer meets the requirements for eligibility.
- C. Individual employee participation will be decided on a case-by-case basis by the individual with delegated authority.
- D. If an employee's request to participate in the telecommuting program is denied, management will provide written notice to the employee explaining the reasons for the denial which shall include the process for submitting requests for reconsideration.

**990-1-70      DELEGATIONS OF AUTHORITY**

The authority to establish and maintain telecommuting programs is delegated to OPDIV/STAFFDIV Heads, who may redelegate without restriction. We encourage delegation of individual employee telecommuting arrangements to front-line supervisors, as they are usually in the best position to determine eligibility and assess results.

#### **990-1-80      LABOR-MANAGEMENT RELATIONS**

In implementing this policy OPDIVs/STAFFDIVs must meet their labor relations obligations.

#### **990-1-90      TELECENTERS**

OPDIVs/STAFFDIVs shall establish guidelines for using telecenters. A [list of telecenters and their locations](#) is available at the [GSA website](#).

#### **990-1-100      HOTELING**

Working with the HHS Office of Facilities Services and the Assistant Secretary for Resources and Technology as appropriate, OPDIVs/STAFFDIVs shall establish guideli

# **APPENDIX 3B**

# APPENDIX 4



U.S.DEPARTMENT OF HEALTH AND HUMAN  
SERVICES

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# Non-SES Performance Management Appraisal Program (PMAP)

Revised August 4,  
2011

## BACKGROUND

Title 5, United States Code, Chapter 43, requires that each agency establish one or more Performance Management Appraisal Programs (PMAP). The Department of Health and Human Services' (HHS) goal is to design and implement a performance management system which supports individual, team and organizational effectiveness.

The Office of Personnel Management (OPM) approved the Department to transition from a 4-tier to a 5-tier performance management system. This decision was based on information received from performance data and employee feedback from several Department-wide non-Senior Executive Service (SES) PMAP review sessions. The spring 2011 Department-wide employee survey results favoring the implementation of a 5-tier performance system was a key factor used in making the decision to change systems. The new performance management system has the same rating levels as the Department's Senior Executive Service (SES) performance management rating system. By aligning the SES and non-SES performance systems, HHS can clearly cascade performance goals and standards across the organization.

This PMAP is the framework of Department-wide policies and parameters established for planning, monitoring, developing, evaluating, and rewarding individual performance. The resulting performance information will be used in making personnel decisions.

This 5-tier PMAP establishes an effective, efficient performance appraisal process that will enable managers and supervisors to:

- Communicate organizational goals and objectives to employees;
- Link performance requirements to HHS and OPDIV/STAFFDIV<sup>1</sup> strategic planning initiatives;
- Promote individual and/or team accountability for accomplishing organizational goals;
- Effectively address the training needs of each employee;
- Monitor progress and provide formal employee feedback;
- Use appropriate measures of performance as the basis for recognizing and rewarding individual accomplishments;
- Use the results of the performance appraisal as a basis for appropriate personnel actions; and,
- Assess and improve individual and organizational performance.

This document supersedes current OPDIV/STAFFDIV performance management program guidance for non-SES managers, supervisors and employees. Any administrative actions already initiated when this system becomes effective shall continue to be processed consistent with the procedures and requirements of the system/program in effect when the action was initiated.

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<sup>1</sup> For purposes of this document, the term OPDIV/STAFFDIV will be used to refer to both HHS Operating Divisions and Staff Divisions.

## I. PURPOSE AND AUTHORITY

This guide establishes the Department of Health and Human Services policies and procedures for planning, monitoring, developing, appraising, and recognizing the performance of all non-SES managers, supervisors, and employees.

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

### Authorities:

- 5 U.S.C. Chapter 43 and Performance Appraisal 5 CFR, Part 430 5 U.S.C. 4303 and 4305 and 5 CFR 432.104 Unacceptable Performance
- 5 U.S.C. Chapter 45 and Awards 5 CFR, Part 451
- 5 U.S.C. 5335 and 5304, and Within-Grade Increases 5 CFR, Part 531, Subpart D
- 5 U.S.C. 5336 and Quality Step Increases 5 CFR, Part 531, Subpart E
- 5 U.S.C. 3502 and 5 CFR 351.504 Reduction-in-Force
- 5 U.S.C. 552a, 5 CFR 293.404 Records of Employee Performance and 5 CFR 293.405
- 5 CFR 432.104 Unacceptable Performance

## II. COVERAGE AND DEFINITIONS

**Coverage:** This Performance Management Appraisal Program covers all HHS employees, non-SES managers, supervisors, and team leaders? The following are *not* covered under this system:

1. A member of the Senior Executive Service;

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<sup>2</sup> For purposes of coverage of this Guide, the term "team leader" encompasses only those employees who have official position descriptions identifying them as team leaders.

2. An employee appointed to the excepted service under Schedule A 213.3102(o) whose appointment is limited to 1 year or less;
3. A fellow appointed under Section 207(g) of the Public Health Service Act, as amended;
4. An expert or consultant;
5. A member of an advisory committee;
6. A person serving under an appointment in the excepted service having a time limit of less than 90 days;
7. A member of the HHS uniformed service, i.e., a PHS Commissioned Corps Officer;
8. A resident, intern, or other student employee who receives a stipend under section 5352 of 5 U.S.C.;
9. An employee on detail to a public international organization;
10. An employee in a position for which employment is not reasonably expected to exceed 90 calendar days in a consecutive 12-month period;
11. An employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;
12. An Administrative Law Judge appointed under Section 3105 of Title 5, U.S. Code;
13. An individual appointed by the President; and,
14. An individual who (a) is serving in a position under a temporary appointment for less than one year (b) agrees to serve without a performance evaluation, and (c) will not be considered for a reappointment or for an increase in pay based in whole or in part on performance.

**Definitions:**

**Appraisal-** The process under which performance is reviewed and evaluated.

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

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

*HHS-704B*- The standard performance plan (located at <http://intranet.hhs.gov/forms/HHS/HHS-704B.pdf>) used to document all of the written performance elements that an employee is expected to accomplish during the appraisal period. See performance plan definition below.

*Performance* - An employee's accomplishment of assigned work as specified in the critical elements of the employee's position.

*Performance Management Appraisal Program (PMAP)*- The framework of Department-wide policies and parameters established for planning, monitoring, developing, evaluating, and rewarding individual performance. The resulting performance information will be used in making personnel decisions.

*Performance Award*- A performance-based, lump sum cash payment to an individual employee based on the employee's rating of record. A performance award does not increase base pay.

*Performance Awards Budget*- The amount of money allocated by the Department/OPDIV/STAFFDIV for distribution as performance awards to covered employees.

*Performance Plan*- All of the written performance elements and standards that an employee is expected to accomplish during the appraisal period. These objectives are linked to specific program and management outcomes and are linked to the Department's and OPDIV/STAFFDIV's strategic plans. These objectives are derived from the OPDIV/STAFFDIV Head's performance plan and are cascaded, as appropriate, to all employees. A performance plan must include all critical elements and their performance standards.

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

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

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

*Quality Step Increase (QSI)* - A permanent increase in basic pay, equivalent to one step within the grade.

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

immediate supervisor.

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

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

**Strategic Planning Initiatives-** The goals and objectives that drive HHS work and initiatives. For example, Department and agency goals, agency strategic plans, annual performance plans, organizational work plans, Presidential initiatives, and other future-focused related initiatives.

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

**Time Off Award-** An award granted to an employee, which allows the employee to take time off from work, with pay and without charge to annual leave.

### **III. PERFORMANCE LEVELS**

#### **LevelS: Achieved Outstanding Results (AO)**

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

- Innovations, improvements, and contributions to management, administrative, technical, or other functional areas that have influence outside the work unit;
- Increases office and/or individual productivity;
- Improves customer, stakeholder, and/or employee satisfaction, resulting in positive evaluations, accolades, and recognition; methodology is modeled outside the organization;
- Easily adapts when responding to changing priorities, unanticipated resource shortages, or other obstacles;
- Initiates significant collaborations, alliances, and coalitions;

- Leads workgroups or teams, such as those that design or influence improvements in program policies, processes, or other key activities;
- Anticipates the need for, and identifies, professional developmental activities that prepare staff and/or oneself to meet future workforce challenges; and/or
- Consistently demonstrates the highest level of ethics, integrity and accountability in achieving specific HHS, OPDIV/STAFFDIV, or program goals; makes recommendations that clarify and influence improvements in ethics activities.

#### **Level4: Achieved More than Expected Results (AM)**

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

- Effectively plans, is well-organized, and completes work assignments that reflect requirements;
- Decisions and actions demonstrate organizational awareness. This includes knowledge of mission, function, policies, technological systems, and culture;

Independently follows-up on actions and improvements that impact the immediate work unit; establishes and maintains strong relationships with employees and/or clients; understands their priorities; balances their interests with organizational demands and requirements; effectively communicates necessary actions to them and employee/customer satisfaction is conveyed; and/or

- When serving on teams and workgroups, contributes substantively and completely according to standards identified in the plan.

#### **Level3: Achieved Expected Results (AE)**

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

- Acquires new skills and knowledge to meet assignment requirements;



- Demonstrates ethics, integrity and accountability to achieve HHS and agency goals; and
- Resolves operational challenges and problems without assistance from higher-level staff.

## **Level 2: Partially Achieved Expected Results (PA)**

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

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

## **Level 1: Achieved Unsatisfactory Results (UR)**

*Undeniably unacceptable performance; consistently does not meet Level 3 (AE) performance requirements.* Repeat observations of performance indicate negative consequences in key outcomes (e.g., quality, timeliness, results, customer satisfaction, etc.) as described in the annual performance plan. The employee fails to meet expectations. Immediate improvement is essential for job retention. Examples include:

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

#### IV. PLANNING AND COMMUNICATING PERFORMANCE

An individual employee performance plan is established annually for each employee. The HHS Employee Performance Plan (located at <http://intranet.hhs.gov/forms/HHS/HHS-704B.p@>) is the form used for all covered employees.

At the beginning of the appraisal period, the rating official and the employee shall discuss the organization's desired program and management outcomes as well as the individual performance objectives toward which the employee should be focusing his/her efforts. The employee will be held accountable for his/her performance during the upcoming appraisal period. The discussion should also focus on the development of performance metrics that are quantifiable and results-based for each individual performance objective. Performance objectives should clearly define expectations and differentiate within the performance levels. The performance metrics should define what is expected at the Achieved Expected Results Level and the Achieved Outstanding Results Level.

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

Each employee should actively participate in developing his/her performance plan for the appraisal period. The final authority for establishing the performance plan rests with the rating official. Written performance plans are provided to the employee within 30 days of the beginning of the appraisal period, which runs from January 1 to December 31. If an employee enters a position after the start of the appraisal cycle, a performance plan must be established within 30 days of the date the employee enters on duty. This system does not require a second level review of the performance plan. However, at the discretion of the OPDIV/STAFFDIV Head, a second level review may be conducted. The supervisor and the employee will sign and keep a copy of the performance plan.

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

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

## **The HHS Employee Performance Plan**

The HHS performance plan has two categories of critical elements: (1) Administrative Requirements and (2) Individual Performance Outcomes, which include specific individual management and program outcomes that will contribute to the success of the OPDIV/STAFFDIV's and Department's strategic plans. The Administrative Requirements (Part III of the Performance Plan) will constitute one critical element. Each outcome/result in the Performance Outcomes section (Part IV of the Performance Plan) will be a critical element. It is expected that there will be between three (3) and five (5) outcomes/results listed for each employee in the Performance Outcomes section.

### **Administrative Requirements:**

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

*Performance Management*- Performance management includes the process by which an employee is involved in improving organizational effectiveness in the accomplishment of agency mission and goals. For supervisors and team leaders, performance management encompasses planning work and setting expectations, continually monitoring performance, developing the capacity to perform, periodically evaluating and/or rating performance, rewarding excellent performance, and addressing poor performance.

*Employee Development*- Includes management and employee efforts to enhance individual or staff performance, as well as obtaining skills, knowledge, and abilities for projected assignments, and/or potential future career advancement.

*Workforce Activity*- Includes planning, organizing, assigning, and/or performing work; allocating resources (if supervisory); adjusting to change; and participating in improvements leading to attainment of organizational goals.

*Customer Service* - Includes responsiveness to customers as defined by Department and OPDIV/STAFFDIV expectations and standards.

*Recovering Improper Payments*- Applies only to staff having recovery responsibilities related to grants, procurement, and financial payments.

### **Individual Performance Outcomes**

This critical element category identifies the key individual performance outcomes and specific end-results that contribute to the success of HHS and the OPDIV/STAFFDIV. These results-oriented outcomes should be consistent with strategic planning initiatives, such as the HHS Strategic Plan and

OPDIV/STAFFDIV program goals and objectives. Managers should limit the number of outcomes to the most important aspects of the employee's position, usually three to five.

Performance plans must include one or more outcomes outlined in the HHS Strategic Plan. This cascade approach should ensure that performance plans for all employees support the organizational goals of the agency. The "cascade" element should be identified in the following way under the appropriate outcome in the performance plan: "This element also relates to and supports objectives in the HHS Strategic Plan, specifically [cite the specific objective]."

Each objective should include at least one accompanying metric that is quantifiable and results-based, and each metric should contain a specific target result to be achieved. Metrics should address significant program outcomes and improvements such as: enhanced quality of services and healthcare, new knowledge and insight from research, increased level of performance, and/or improvements in customer satisfaction. All objectives must be achievable by the end of the rating period. If numeric information on performance will not be available by the end of the rating period, it must be clear how success will be measured. Data sources for all metrics must exist currently, or must be on schedule to be available in time to meet the reporting deadline. For metrics that are expressed as comparisons to past performance (e.g., "increase production by 10%"), baseline data must be available.

These requirements must be aligned and directly contribute to the Department's goals and priorities established by the HHS Strategic Plan, Annual Plan, approved budget, and/or OPDIV/STAFFDIV goals and objectives.

## **V. MONITORING PERFORMANCE**

### **Progress Reviews**

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

The supervisor will:

- Discuss, and, as appropriate, document areas needing improvement;
- Discuss with the employee and document any changes to performance goals that may be necessitated by such factors as new program requirements, changes in resource levels, etc;

- Consider any guidance provided by the Assistant Secretary for Administration (ASA) and/or the OPDIV/STAFFDIV Head;
- When appropriate, obtain employee performance feedback from other agency managers and staff. Examples may include: the employee was part of a workgroup headed by another agency manager or staff lead, or the employee was on a rotational assignment or a detail; and
- Provide written documentation if performance on any element is less than Achieved Expected Results, including specific deficiencies and steps needed to bring performance to Achieved Expected Results. This will include reference to unsuccessful efforts made during the performance period, if they occurred. (See Section VII for required action if the employee's performance is determined to be Achieved Unsatisfactory Results).

The supervisor and the employee will sign and retain a copy of the progress review. Section IV of the HHS-704B (performance plan) can be used to document the employee's progress.

#### **Employee Assistance for Less than Achieved Expected Results (AE) Performance**

If an employee is rated below the Achieved Expected Results level on any element, the supervisor will provide assistance. Assistance may include, but is not limited to, formal training, on-the-job training, counseling, mentoring, and closer supervision. Assistance may also be provided to employees with higher ratings who seek help to improve or enhance their performance.

### **VI. RATING PERFORMANCE AT THE END OF THE APPRAISAL PERIOD**

At the conclusion of the appraisal cycle the OPDIV/STAFFDIV, in consultation with the ASA Office of Human Resources (OHR), will issue guidance and timelines for the completion of the annual employee evaluations and the submission of performance award nominations. Appraisal process guidance issued by the OPDIV/STAFFDIV will be consistent with all policies, procedures, and requirements set forth in these instructions and will not place limits on the number of ratings issued at any given level. The OPDIV/STAFFDIV appraisal process guidance will be communicated to all OPDIV/STAFFDIV staff.

Between January 1 and February 15 of each year, the rating official will meet with the employee to discuss the rating of record and, if applicable, any needed improvement assistance.

#### **Summary Rating**

The rating official provides his/her own assessment of the employee's performance during the rating period under the written performance plan and requirements. The rating official rates each element performed for the minimum period (90 calendar days) unless the employee did not have a reasonable

opportunity to perform a particular element for the minimum period. If the preceding is the case, the element will be marked "Not Applicable."

A written narrative may be prepared, but is not required, for Achieved Expected Results, Achieved More Than Expected Results, and Achieved Outstanding Results ratings in support of the rating of record. For ratings below Achieved Expected Results, the rating official must prepare a written assessment of an employee's overall performance. This should include identifying specific performance deficiencies. Section IV of the HHS-704B (performance plan) will be used for this purpose. If an employee's performance is Achieved Unsatisfactory Results, the supervisor must, at a minimum, give written notice to the employee of his/her failure to demonstrate acceptable performance. In addition, the supervisor must give the employee an opportunity to demonstrate acceptable performance under a Performance Improvement Plan (PIP). Supervisors will consult with the servicing Human Resources Center or respective Labor and Employee Relations Office for assistance in dealing with unacceptable performance. See Section VII below for further information.

This system does not require a second level review of the rating. However, at the discretion of the OPDIV/STAFFDIV Head, the rating official may submit the rating to the reviewing official for concurrence prior to providing the rating to the employee. If the summary rating is Achieved Unsatisfactory Results, a second level review is required prior to issuing a final rating to the employee.

When the appraisal form is presented to the employee, the rating official will conduct a performance discussion. The employee will be asked to sign and date the appraisal form. The employee's signature does not mean that the employee agrees with its content. In those instances where the employee declines to sign the appraisal form upon receipt of the rating of record, the rating official will indicate such in the appropriate section of the form. The employee will be provided with a copy of the complete final summary rating.

### **Method for Deriving Summary Ratings**

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

The guidance below will be followed in determining an overall summary rating:

A rating will be assigned to each critical element (Administrative Requirements and the individual critical elements under the Individual Performance Outcomes). This rating will be based upon the extent to which the employee's performance met one of the rating level definitions (Achieved Outstanding Results, Achieved More Than Expected Results, Achieved Expected Results, Partially Achieved Expected Results, and Achieved Unsatisfactory Results).

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

Critical Element Ratings	Points Assigned
Level5: Achieved Outstanding Results (AO)	5.00
Level4: Achieved More than Expected Results (AM)	4.00
Level3: Achieved Expected Results (AE)	3.00
Level2: Partially Achieved Expected Results (PA)	2.00
Level1: Achieved Unsatisfactory Results (UR)	1.00

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

Critical Element Ratings	Points Assigned
Level5: Achieved Outstanding Results (AO)	5.00
Level4: Achieved More than Expected Results (AM)	4.00-4.99
Level3: Achieved Expected Results (AE)	3.00-3.99
Level2: Partially Achieved Expected Results (PA)	2.00-2.99
Level1: Achieved Unsatisfactory Results (UR)	0.01-1.99

Exceptions to the mathematical formula:

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

### **Rating of Record**

A summary rating prepared at the end of the appraisal period will become the rating of record. A summary rating may also be prepared prior to the end of the appraisal cycle. For example, when the employee is reassigned to another position or when the supervisor leaves his/her position. This summary rating will be considered by the rating official in preparing an end-of-the-cycle rating of record. If there are less than 90 days prior to the end of the appraisal cycle, this summary rating will become the rating of record.

### **Extending the Appraisal Period**

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

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

If the employee was issued a summary rating for another position within HHS, or under another supervisor within HHS earlier in the performance year, the summary rating will become the rating of record. This applies to the employee who has not worked under a performance plan in the new position for at least 90 days.

See Exhibit 2 of this Guide for additional information on ratings for non-standard situations.

### **Disagreement with the Rating**

Employees are encouraged to discuss disagreements with the supervisor/rating official and the reviewing official (if required by the OPDIV/STAFFDIV Head) in an attempt to resolve the issue informally. If the employee disagrees with the rating of record, the rating official must advise the employee of his/her right to respond in writing to the rating. This response will be attached to the rating form, but it will not change the rating assigned by the rating official. An employee may also file a grievance through the HHS or OPDIV/STAFFDIV grievance procedures, as applicable. An employee may pursue EEO complaint procedures, if he/she believes the rating is based on prohibited discrimination. An employee has the option of requesting a second level review by their reviewing official. The reviewing official may make recommendations to the rating official to change or modify the employee's rating levels; however, the final determination rests with the rating official.

## **VII. USING PERFORMANCE RESULTS**

### **Impact of Performance Outcomes and Results**

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

### **Actions Based on Achieved Outstanding Results, Achieved More than Expected Results, or Achieved Expected Results Performance**

Performance awards are an integral part of the performance appraisal process. As such, they are linked to the rating of record, and submitted and considered for approval only at the conclusion of the rating period. Employees whose summary rating is Achieved Outstanding Results will receive a performance award payment up to 5% of salary, including locality payment or special rate supplement. This award is based on the salary as of the last day of the rating period (December 31),



subject to funds availability within the OPDIV/STAFFDIV<sup>3</sup>. OPDIV/STAFFDIVs may offer employees an option to convert a cash award into time-off equivalent, not to exceed an aggregate calendar year total of 40 hours time off. Any remaining cash balance will be paid out in cash. Employees receiving an Achieved Outstanding Results rating are also eligible for a Quality Step Increase (QSI). However, employees will not receive both a QSI and a cash award for the same performance. HHS QSI's shall only be awarded based on an employee receiving the highest rating of record (Achieved Outstanding Results) for the previous rating cycle and not for mid-cycle performance accomplishments. Further, a QSI may not be granted to an employee who has received a QSI within the preceding 52 consecutive calendar weeks. QSI's are not automatic and awarded at management's discretion.

Employees whose performance is Achieved More than Expected Results may be eligible for a performance award, at the discretion of the OPDIV/STAFFDIV, up to 4% of salary. Also, employees whose performance is Achieved Expected Results may be eligible for a performance award, at the discretion of the OPDIV/STAFFDIV, up to 3% of salary. However, all employees rated Achieved Outstanding Results must be paid "in full" first. Employees may choose to convert the cash award amount of the performance award into time-off equivalent, not to exceed an aggregate calendar year total of 40 hours time off. Any remaining cash balance will be paid out in cash.

In order to receive a QSI, employees must receive a rating of Achieved Outstanding Results. Employees who receive Partially Achieved Expected Results or Achieved Unsatisfactory Results ratings are not eligible for performance rating-based cash awards or QSI's.

OPDIV/STAFFDIVs may also exercise existing authorities to provide employee recognition for short-term accomplishments using other award types, including, but not limited to, Special Act/Special Service Awards, and Time-Off Awards, as appropriate.

#### **Actions Based on Partially Achieved Expected Results Performance**

The Partially Achieved Expected Results level describes performance that is adequate for retention in the position. Supervisors are strongly encouraged to closely monitor an employee who is rated Partially Achieved Expected Results and to offer any assistance needed to bring the employee's performance to the Achieved Expected Results Level. Employees who receive a Partially Achieved Expected Results rating are not eligible to receive a within-grade increase. Supervisors should consult with the servicing Human Resources Center Labor and Employee Relations Office for assistance in dealing with Partially Achieved Expected Results performance.

#### **Actions Based on Achieved Unsatisfactory Results Performance**

If performance on any critical element is determined to be Achieved Unsatisfactory Results at any time during the rating period, the supervisor will provide assistance to help the employee improve performance to an acceptable (Partially Achieved Expected Results) level. The supervisor must, at a minimum, give written notice to the employee of his or her failure to demonstrate acceptable

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<sup>3</sup> The locality payment or special rate supplement as well as funds availability apply to both the Achieved More than Expected Results and Achieved Expected Results performance ratings.

performance and give the employee an opportunity to demonstrate acceptable performance under a Performance Improvement Plan (PIP). This written notification must include:

1. The specific element(s) on which the employee's performance is determined to be Achieved Unsatisfactory Results, including specific examples of how the employee's performance fails to meet this level of performance;
2. The performance requirement(s) that must be met;
3. The specific assistance that will be provided to help the employee improve performance;
4. The specific period of time the employee will be given to demonstrate acceptable performance; and
5. Notification that actions may be initiated to reassign, reduce in grade, or remove the employee if performance does not improve to the Partially Achieved Expected Results level.

Supervisors will consult with the servicing Human Resources Center Labor and Employee Relations Office for assistance in dealing with unacceptable performance.

Every rating official should be trained in the practical application of the PMAP to ensure its effective administration. Training on developing performance plans, conducting progress reviews, assigning ratings, and using appraisals as a key factor in making other management decisions, will be provided to managers and supervisors. Training will be designed to assure that the performance management process operates effectively. Information sessions will also be held for employees on key aspects of the performance management process. Rating officials are expected to explain the system to subordinate employees in a manner that should enable them to understand the specific aspects of their performance plan and the supervisor's performance expectations.

## **IX. RECORDKEEPING AND RECORD USES**

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

The retention, maintenance, accessibility, and disposal of performance records, as well as supervisors' copies, will be in accordance with Office of Personnel Management regulations.

Performance records must be retained for five years and transferred with the employee's Official Personnel File when the employee transfers to a new organization in HHS or to another agency.

## **X. MONITORING AND EVALUATING THE PROGRAM**

OHR has responsibility for the ongoing review of the operation of performance management (including performance awards) throughout the Department. Each OPDIV/STAFFDIV has the responsibility for monitoring and evaluating its own performance management program (including performance awards) within the framework of the HHS guidelines.

## **EXHIBIT I**

### **HHS PERFORMANCE PLAN REFERENCE GUIDE**

#### **Performance Plan**

All elements of the performance plan are critical and must support the organization's goals and ultimately the HHS Strategic Plan. The elements must be related to the employee's duties and responsibilities.

All employees will be rated on the Administrative Requirements critical element (Part III of the plan). The supervisor, along with input from the employee will develop and establish specific outcomes to support Agency strategic initiatives to be included as critical elements in the Individual Performance Outcomes section (Part IV of the plan).

Each objective should include at least one accompanying metric that is quantifiable and results-based, and each metric should contain a specific target result to be achieved and clearly distinguish between Achieved More than Expected Results and Achieved Expected Results performance.

The performance plan should be signed and dated by the supervisor and the employee in Part I.A prior to implementation.

#### **Progress Review**

Supervisors will conduct at least one progress review, at approximately the midpoint in the appraisal cycle. While only one progress review is required, additional reviews are encouraged to maximize employee feedback. The supervisor must provide written documentation if performance on any element is less than Achieved Expected Results. The supervisor and the employee should sign and date Part I.B. after a progress review is conducted. If the employee refuses to sign, the supervisor should annotate the form, "Employee declined to sign. Progress review conducted on [date]."

#### **Performance Appraisal**

The supervisor will assign a rating to each critical element (Administrative Requirements and the individual critical elements under the Program Work Plan). The rating level definitions will be assigned a numerical score as follows:

Critical Element Ratings	Points Assigned
Level5: Achieved Outstanding Results (AO)	5.00
Level4: Achieved More than Expected Results (AM)	4.00
Level3: Achieved Expected Results (AE)	3.00
Level2: Partially Achieved Expected Results (PA)	2.00
Level1: Achieved Unsatisfactory Results (UR)	1.00

After rating and assigning a score to each critical element, the rating official will total the points and divide by the number of critical elements, to arrive at an average score (up to one decimal place). This score will be converted to a summary rating based on the following point values:

Critical Element Ratings	Points Assigned
Level5: Achieved Outstanding Results (AO)	5.00
Level4: Achieved More than Expected Results (AM)	4.00-4.99
Level3: Achieved Expected Results (AE)	3.00-3.99
Level2: Partially Achieved Expected Results (PA)	2.00-2.99
Level1: Achieved Unsatisfactory Results (UR)	0.01-1.99

Exceptions to the mathematical formula:

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

If required by the OPDIV/STAFFDIV Head, the supervisor will submit the rating to the reviewing official for concurrence. The supervisor will conduct a performance discussion with the employee. The supervisor and employee should sign and date Part I.C. The employee will be provided with a copy of the complete final rating of record. If the employee refuses to sign, the supervisor should annotate the form, "Employee declined to sign. Rating discussed and copy provided on [date]."

A copy will be provided to the employee and the original forwarded to the designated individual within the OPDIV/STAFFDIV.

## **EXHIBIT 2**

### **GUIDE FOR NON-STANDARD SITUATIONS**

<b>Situation</b>	<b>Performance Plan</b>	<b>Action To Be Taken</b>
For whatever reason, employee did not have a plan at any time during the entire appraisal period, or did not perform under a plan for 90 days, e.g., employee returning from long-term training.	Establish plan immediately.	If there are more than 45 days left in the appraisal cycle, extend the rating period. If there are less than 45 days, the employee will not receive a rating for that cycle.
Employee moves from one position (A) to another position (B) within 90 days of end of appraisal period.	Establish plan for new position under option (2).	(1) If employee was in position A for at least 90 days, rate employee prior to the position change. This rating will become the final rating of record for the appraisal period; or (2) If employee was not in position A for at least 90 days, or was not under a plan for 90 days in position A, extend the rating period to allow for 90 days in position B and rate the employee at that time if there are more than 45 days left in the appraisal cycle.
Within 90 days of the end of the appraisal period, employee is hired from outside the Government.	Establish plan.	If there are more than 45 days left in the appraisal cycle, extend the appraisal period until the 90 day minimum rating period is reached; then rate employee based on the plan for that period. If less than 45 days, the employee will not receive a rating until the next cycle.
Employee changes positions within HHS during the appraisal period.	Establish plan for new position.	If the plan has been in effect for at least 90 days at the time of each position change, rate the employee. The rating of record for the appraisal period must consider all ratings made during the entire appraisal period.
Employee is detailed or temporarily assigned to another position in HHS, and the time in that position is	Establish plan for detailed position or new position.	If a plan had been in place for at least 90 days, rate at time of position change. Also rate at end of temporary assignment (or detail) if it lasted at least 90 days. Consider all ratings made

expected to be at least 90 days by the end of the appraisal period.		during the appraisal period in preparing the annual summary rating.
Employee is detailed or assigned outside HHS and the time in the outside organization or agency is expected to be at least 90 days.	Make a reasonable effort to see that a plan is given to the employee while at the outside entity.	If a plan had been in effect for at least 90 days, rate at time of position change. Also, the rating official will make a reasonable effort to obtain performance information from that outside assignment, especially if employee was not on a HHS plan for at least 90 days during the appraisal period. At a minimum, the rating official will request a memorandum describing the assignments performed by the employee and an assessment of how well the employee performed the assignments. The HHS rating official will consider all ratings made during the appraisal period in preparing the rating of record.
Before the end of the appraisal period, the employee goes on a long-term training and does not return by the end of the appraisal period.	N/A.	If a plan had been in effect for at least 90 days, rate at time employee goes on training based on established plan.
Employee transfers from HHS to a new agency after serving under a plan for at least 90 days.	N/A.	Rate the employee and submit rating as required by OPDIV/STAFFDIV.

# APPENDIX 5

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### HHS EMPLOYEE PERFORMANCE APPRAISAL PLAN

(See HHS-704A, "Performance Management Appraisal Program", for additional information.)

EMPLOYEE'S NAME (Last, First, MI)		APPRAISAL PERIOD From: _____ To: _____	
ORGANIZATION	POSITION TITLE, SERIES, AND GRADE		

#### I. PERFORMANCE PLAN DEVELOPMENT, MONITORING AND

##### APPRAISAL A. Performance Plan Development - Establishes Annual Performance Expectations

[NOTE: The employee's signature does not indicate agreement; only that the plan has been communicated.]

RATING OFFICIAL'S SIGNATURE

DATE

REVIEWING OFFICIAL'S SIGNATURE (If required by OPDIV Head)

DATE

EMPLOYEE'S SIGNATURE

DATE


#### B. Progress Review - Written narrative required if performance on any element is less than Fully Successful.

RATING OFFICIAL'S SIGNATURE

EMPLOYEE'S SIGNATURE

DATE

DATE




C. Summary Rating - Section II, Critical Elements, must be completed in order to generate this Summary Rating.

[NOTE: The employee's signature does not indicate agreement; only that the rating has been communicated.]

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Exceptional	Fully Successful	Minimally Successful	Unacceptable
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RATING OFFICIAL'S SIGNATURE

REVIEWING OFFICIAL'S SIGNATURE (If required by OPDIV Head) (Required if rating is Unacceptable)

DATE

DATE

EMPLOYEE'S SIGNATURE

DATE

HHS-704B (12/10)

PAGE 1 OF 8

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HHS EMPLOYEE PERFORMANCE PLAN (continued)

EMPLOYEE'S NAME (Last, First, MI)

APPRAISAL PERIOD

From:

To:

II. CRITICAL ELEMENTS

The following guidance will be followed in determining an overall summary rating:

A rating will be assigned to each critical element (Administrative Requirements (Part A. of this Section) and the individual critical elements under the Individual Performance Outcomes (Part B. of this Section)). This rating will be based upon the extent to which the employee's performance met one of the "Performance Standards" defined in Section V. (Exceptional, Fully Successful, Minimally Successful, and Unacceptable).

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

Exceptional (E): 5 points, Fully Successful (FS): 3 points, Minimally Successful (MS): 2 points, Unacceptable (U): 1 point

NOTE: Performance plans must include one or more outcomes\* that include or track back to the "One HHS" Program and Management Objectives. This cascading approach should ensure that performance plans for all employees support the organizational goals of the agency. Any "cascade" element should be identified in the following way under the appropriate outcome in the performance plan: "This

element also relates to and supports objectives in the "One HHS" Program and Management Objectives, specifically [cite the specific objective]."

*\*The outcomes may be **Administrative Requirements** and/or **Individual Performance**, but at least one outcome must include or track back to the "One HHS" Program and Management Objectives.*

A. ADMINISTRATIVE REQUIREMENTS - CRITICAL ELEMENT

**NOTE:** The supervisor should determine, by marking the appropriate box(es), which aspects of this critical element apply to the employee's job duties and responsibilities.

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For Managers/Supervisors & Team Leaders\*\*

- Managers will actively engage in the hiring process with their servicing human resources specialist(s) from the prerecruitment consultation phase through on-boarding. This would include ensuring the established hiring process timelines are met.
- Leads in a proactive, customer-responsive manner consistent with OPDIV/STAFFDIV vision and values: ascertains customer needs/requirements; solicits feedback; and makes appropriate adjustments.
- Communicates program and management goals to staff; identifies targeted results/outcomes, and timeframes. Allocates and adjusts resources in response to workload and priority changes.
- Plans, organizes, and assigns unit work.
- Establishes employee performance plans, and completes required reviews and final ratings.
- Appropriately recognizes and rewards employee performance.
- Assesses employees' individual developmental needs, and provides developmental opportunities to staff.
- Ensures employee awareness of, and compliance with, requirements relative to ethics, financial disclosure, avoiding conflicts of interest, standards of ethical conduct, political activity, and procurement integrity.
- Demonstrates support for EEO/diversity and employee worklife quality and fosters a cooperative work environment where diverse opinions are solicited and respected.

Participates in updating and implementing succession plans for current and future staffing needs.

Seeks resolution of workplace conflicts at earliest stage.

Conducts program assessments and evaluations to ensure objectives were met.

Where applicable, ensures that HHS, OPDIV, and program goals and requirements for correcting grant, procurement, and finance system weaknesses are achieved or exceeded.

Other aspects (*describe*):

*\*\* To be applied only to Team Leaders who have official position descriptions identifying them as team leaders.*

(Summary Rating Elements, continued)

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PAGE 2 OF 8

**HHS EMPLOYEE PERFORMANCE PLAN** (*continued*)

EMPLOYEE'S NAME (*Last, First, MI*)

APPRAISAL PERIOD

From:

To:

**II. A.**

**CRITICAL ELEMENTS** (*continued*)

**ADMINISTRATIVE REQUIREMENTS - CRITICAL ELEMENT** (*continued*)

**NOTE:** The supervisor should determine, by marking the appropriate box(es), which aspects of this critical element apply to the employee's job duties and responsibilities.

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**For All Staff**

Provides responsive service to internal/external customers that support customer and program requirements.

Participates with supervisor in establishing individual performance plans, and provides self-assessments if required.

Demonstrates integrity and adheres to Government-wide and HHS Standards of Ethical Conduct, including but not limited to, avoiding conflicts of interest, participation in outside activities, political activity, financial disclosure, and use of government resources and equipment.

Treats others with respect; fosters a cooperative environment where differences and similarities in opinions are encouraged and communicated.

Identifies and communicates individual developmental needs consistent with the agency mission; assists coworkers by mentoring, advising, or guiding them in understanding work assignments as appropriate.

Actively participates in identifying, communicating, and implementing quality improvements that ensure attainment of workforce goals.

When applicable, identifies and addresses weaknesses in grant system(s), procurement systems, and finance offices to ensure recovery of improper payments and to reduce the number of improper payments made by the Department.

Other aspects (describe):

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**Administrative Requirements**☐

**ELEMENT**

**E(5)**

**RATING**

☐☐☐

**FS(3)**

**MS(2)**

**U(1)**

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**B. INDIVIDUAL PERFORMANCE OUTCOMES - CRITICAL ELEMENTS**

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**Individual Performance Outcomes** *(List individual critical elements)*

**ELEMENT**

☐☐

**1.**

**E(5)**

**RATING**

☐☐☐

**FS(3)**

**MS(2)**

**U(1)**

**NOTE:** As per HHS Policy, the following element **must** track to the One HHS Program and Management Objectives.

Description:

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*(Summary Rating Elements, continued)*

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**PAGE 3 OF 8**

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**HHS EMPLOYEE PERFORMANCE PLAN** *(continued)*

EMPLOYEE'S NAME *(Last, First, MI)*

APPRAISAL PERIOD

From:

To:

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II. B.

CRITICAL ELEMENTS (continued)

INDIVIDUAL PERFORMANCE OUTCOMES - CRITICAL ELEMENTS (continued)

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Individual Performance Outcomes (List individual critical elements)

ELEMENT

2.  
Description:  
E(5)

RATING

FS(3) MS(2) U(1)

3.  
Description:

E(5) FS(3) MS(2) U(1)

4.  
Description:

E(5) FS(3) MS(2) U(1)

(Summary Rating Elements, continued)

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HHS EMPLOYEE PERFORMANCE PLAN (continued)

EMPLOYEE'S NAME (Last, First, MI)	APPRAISAL PERIOD From: To:

II. B.

**CRITICAL ELEMENTS (continued)****INDIVIDUAL PERFORMANCE OUTCOMES - CRITICAL ELEMENTS (continued)**

Individual Performance Outcomes (List individual critical elements)

☐**ELEMENT**

5.

Description:

E(5)

**RATING**☐☐☐**FS(3) MS(2) U(1)****III. CONVERSION OF ELEMENTS TO SUMMARY RATING**

After rating and assigning a score to each critical element, the rating official will total the points and divide by the number of critical elements, to arrive at an average score (up to one decimal place). This score will be converted to a summary rating based on the following point values:

**Total Point Value:** \_\_\_\_\_ **Divided by Number of Critical Elements:** \_\_\_\_\_ **= Average Score:** \_\_\_\_\_

Average Score will be calculated up to 1 decimal place. This numerical score will then be converted to a Summary Rating, as follows:

<b>Exceptional:</b>	4.4 to 5 points
<b>Fully Successful:</b>	3 to 4.3 points
<b>Minimally Successful:</b>	2 to 2.9 points
<b>Unacceptable:</b>	1 to 1.9 points

This Summary Rating will be recorded on **Page 1** of this form.

**Exceptions to the mathematical formula:**

- If an employee receives Minimally Successful on one or more critical elements, he/she cannot receive a summary rating of higher than Fully Successful, regardless of the average point score.
- A summary rating of Unacceptable must be assigned to any employee who is rated Unacceptable on any critical element.

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PAGE 5 OF 8

**HHS EMPLOYEE PERFORMANCE PLAN (continued)**

EMPLOYEE'S NAME (Last, First, MI)

APPRAISAL PERIOD

From:

To:

**IV. WRITTEN NARRATIVE**

For progress review and/or summary rating. Optional, unless performance is below Fully Successful.

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**HHS EMPLOYEE PERFORMANCE PLAN** *(continued)*


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**V.****Exceptional (E):****PERFORMANCE STANDARDS**

The employee performed as a model of excellence by surpassing expectations. Indicators of performance at this level include outcomes that exceed Fully Successful level standards, for critical elements described in the annual performance plan, and as measured by appropriate assessment tools. Examples include:

- Innovations, improvements, and contributions to management, administrative, technical, or other functional areas that impact outside the work unit and facilitate organizational recognition;
- Increases in office and/or individual productivity;
  - Improved customer, stakeholder, and/or employee satisfaction, resulting in positive evaluations, accolades, and recognition; methodology is modeled outside the organization. Flexibility and adaptability in responding to changing priorities, unanticipated resource shortages, or other obstacles;
- Initiation of significant collaborations, alliances, and coalitions;
  - Leadership on workgroups or teams, such as those that design or influence improvements in program policies processes, or other key activities;
  - Anticipates the need for, and identifies, professional developmental activities that prepare staff and/or oneself to meet future workforce challenges; and/or
  - Consistently demonstrates the highest level of ethics, integrity and accountability in achieving specific HHS, OPDIV, or programs goals; makes recommendations that foster clarification and/or influence improvements in ethics activities.

**Fully Successful (FS):**

The employee met all critical elements, as described in the annual performance plan, and as measured by appropriate assessment tools. Examples include:

- Planned, well-organized, and complete work assignments that reflect requirements;
  - Decisions and actions that demonstrate organizational awareness including knowledge of mission, function, policies, technological systems, and culture;
  - Independently follows-up on actions and improvements that impact the immediate work unit; establishes and maintains strong relationships with employees and/or clients; understands their priorities; balances their interests with organizational demands and requirements; effectively communicates necessary actions to them and employee/customer satisfaction is conveyed;
- When serving on teams and workgroups, contributions are substantive and completed according to standards;
- Resolution of operational challenges and problems without assistance from higher-level staff;
- Acquires new skills and knowledge through traditional and other means to meet assignment requirements; and/or
- Demonstration of ethics, integrity and accountability that achieve HHS and agency goals.

**Minimally Successful (MS):**

The employee had difficulties in meeting expectations. This is the minimum level of acceptable performance for retention on the job. Improvement is necessary. Examples include:

- Occasionally fails to meet assigned deadlines;
- Work assignments occasionally require major revisions or often require minor revisions;
- Application of technical knowledge to completion of work assignments is not reliable in many cases;
- Occasionally fails to adhere to required procedures, instructions, and/or formats in completing work assignments;
- Occasionally fails to adapt to changes in priorities, procedures or program direction; and/or
  - The employee has minimal impact on program performance, productivity, morale, organizational effectiveness and/or customer satisfaction.

**Unacceptable (U):**

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

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

- Frequently fails to adapt to changes in priorities, procedures or program direction.



**HHS PERFORMANCE PLAN INSTRUCTIONS**

**Performance Plan**

All elements of the performance plan are critical. Established requirements must support HHS goals and objectives.

All employees will be rated on the Administrative Requirements critical element (Part II.A. of the plan). In addition, the supervisor, with input from the employee, will develop and establish specific outcomes in support of Agency strategic initiatives to be included as critical elements in the Individual Performance Outcomes section (Part II.B. of the plan).

The performance plan should be signed and dated by the supervisor and the employee in Part I.A. prior to implementation.

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Supervisors will conduct at least one progress review, at approximately the midpoint in the appraisal cycle. The supervisor must provide written documentation if performance on any element is less than Fully Successful. The supervisor and the employee should sign and date Part I.B. after a progress review is conducted. If the employee refuses to sign, the supervisor should annotate the form, "Employee declined to sign. Progress review conducted on [date]."

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The supervisor will assign a rating to each critical element (Administrative Requirements and the individual critical elements under the Individual Performance Outcomes). The rating level definitions will be assigned a numerical score as follows:

**Exceptional:**  
5 points **Fully**  
**Successful:**  
3 points  
**Minimally**

**Successful:**

2 point

**Unacceptable:**

1 point

points

After rating and assigning a score to each critical element, the rating official will total the points and divide by the number of critical elements, to arrive at an average score (up to one decimal place). This score will be converted to a summary rating based on the following point values:

**Exceptional:**

**Fully Successful: Minimally Successful: Unacceptable:**

**Exceptions to the mathematical formula:**

4.4 to 5 points

3 to 4.3 points

2 to 2.9 points

1 to 1.9 points

- If an employee receives Minimally Successful on one or more critical elements, he/she cannot receive a summary rating of higher than Fully Successful, regardless of the average point score.
- A summary rating of Unacceptable will be assigned to any employee who is rated Unacceptable on any critical element.

If required by the OPDIV Head, the supervisor will submit the rating to the reviewing official for concurrence. The supervisor will conduct a performance discussion with the employee. The supervisor and employee should sign and date Part I.C. The employee will be provided with a copy of the complete final rating of record. If the employee refuses to sign, the supervisor should annotate the form, "Employee declined to sign. Rating discussed and copy provided on [date]."

A copy will be provided to the employee and the original forwarded to the designated individual within the OPDIV.



# APPENDIX 6

## Material Transmitted:

Department of Health and Human Services (HHS) Instruction 752, Corrective Action, Discipline and Adverse Actions, dated March 20, 2009.

## Material Superseded:

This constitutes new policy.

## Background:

Consistent with the continuous improvement initiatives, the Department is issuing Instruction 752, Corrective Action, Discipline and Adverse Actions, which is established under the authority of regulations issued by the Office of Personnel Management (OPM) found at Title 5, Code of Federal Regulations, Part 752, Adverse Actions.

The Instruction clarifies roles and responsibilities for managers when addressing employee misconduct in the workplace. It also establishes guidance and criteria to ensure that corrective action is consistent with good management practices.

This issuance is effective immediately. Implementation under this issuance must be carried out in accordance with applicable laws, regulations, bargaining agreements, and Departmental policy.

Antonia T. Harris  
Deputy Assistant Secretary for Human Resources  
Assistant Secretary for Administration and  
Management

INSTRUCTION 752

**Subject:** Chapter 752 Corrective Action, Discipline and Adverse Actions

752-1-00	Purpose
10	Authority
20	Coverage
30	Definitions
40	Abbreviations
50	Responsibilities
60	Policy
70	Procedures
80	Records

Appendix 752-1-A	Penalty Consideration
Appendix 752-1-B	HHS Guide for Corrective Action
Appendix 752-1-C	OIG Guidance/Information
Appendix 752-1-D	Guide for Implementing Alternative Discipline Program

**752-1-00 Purpose**

This instruction sets forth the Department of Health and Human Services (HHS) policy and guidelines for administering employee discipline and adverse actions, including resolution through alternative discipline. This instruction also establishes the authority and responsibility for taking appropriate corrective action for disciplinary or certain non-disciplinary reasons, when it is determined that such actions will promote the efficiency of the service. Discipline, including alternative discipline, is meant, where possible, to prevent recurrence of inappropriate conduct while maintaining good supervisor-employee relationships and retaining valued staff.

This Instruction, also communicates guidance for penalty considerations. Requirements stated in this Instruction are consistent with law, regulations and other Departmental policies applicable at the time of its issuance. Actions taken through the application of this Instruction must comply with the requirements of pertinent laws, rules and regulations, as well as the lawful provisions of applicable negotiated agreements for employees in exclusive bargaining units.

**752-1-10 Authority**

Chapter 75 of Title 5, United States Code and Part 752 of Title 5, Code of Federal Regulations.

**752-1-20 Coverage.**

- A. This Instruction applies to all Operating Divisions (OPDIVs) and offices of HHS, although those OPDIVs with an existing Table of Penalties may refer to those in conjunction with the attached Disciplinary Guide in Appendix B. In instances where an OPDIV Table of Penalties and the Department Disciplinary Guide differ, the

stricter penalty will apply. Employees covered by a collective bargaining agreement may be subject to additional procedures which may supersede/supplement those described in this Instruction.

- B. The disciplinary/adverse action procedures described in this Instruction do not apply to an Administrative Law Judge (ALJ) or the U.S. Public Health Service Commissioned Corps, whose discipline is governed by separate regulatory and statutory requirements.
- C. Department appointees in the Senior Executive Service (SES) are covered by Part 752-1-60B of this instruction.
- D. Management must consult with the servicing Human Resources Office/Center (HRO/HRC) for guidance regarding employee/action coverage.

#### 752-1-30 **Definitions.**

- A. Administrative Leave. An excused absence from duty without charge to leave or loss of pay.
- B. Adverse Action. For purposes of this Instruction, a personnel action taken by management, appealable to the Merit Systems Protection Board (MSPB), to effect an employee's removal, suspension for more than 14 days, furlough without pay for 30 days or less, or reduction in grade or pay.
- C. Alternative discipline (AD). An alternative to traditional discipline, usually when the traditional penalty would be less than removal.
- D. Day. A calendar day (except where otherwise specified).
- E. Deciding Official. A Department supervisor or manager who makes a decision on proposed adverse action or disciplinary action.
- F. Disciplinary Action. For purposes of this Instruction, an action taken by management, not appealable to the MSPB (i.e., written reprimand; suspension for 14 days or less) to address employee misconduct.
- G. Enforced Leave. Making the employee use his or her own sick or annual leave (after the 30-day notice period with pay) pending investigation, inquiry, or further agency action.
- H. Furlough. The placement of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons.
- I. Grade. A level of classification under a position classification system.

- J. Indefinite Suspension. The placement of an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action.
- K. Last Chance Agreements. Terms agreed to by an employee (or former employee) and an employer under which the employee will be given a last opportunity to keep or get back his or her employment, usually when the agency would otherwise remove (or has removed) the employee for performance, conduct, or leave deficiencies. Usually, though not always, such agreements provide for some waiver of appeal or complaint rights.
- L. Pay. The rate of basic pay fixed by law or administrative action for the position held by an employee.
- M. Preponderance of the Evidence. That degree of relevant evidence which a reasonable person, considering the record as a whole, might accept as sufficient to find that a contested fact is more likely to be true than untrue.
- N. Proposing Official. A Department supervisor or manager who proposes an adverse or disciplinary action.
- O. Removal. The involuntary separation of an employee from employment with the Department and Federal service, except when effected due to a reduction-in-force or the expiration of an appointment.
- P. Suspension. The involuntary placement of an employee in a temporary non-duty, non-pay status for disciplinary reasons.

#### 752-1-40 **Abbreviations**

AWOL	Absent Without Leave
CFR	Code of Federal Regulations
EAP	Employee Assistance Program
ERS	Employee Relations Specialist
GS	General Schedule
HRO/HRC	Human Resources Office/Center
MSPB	Merit Systems Protection Board
OGC	Office of General Counsel
OIG	Office of Inspector General
OPDIV	Operational Division
OPF	Official Personnel Folder
OPM	Office of Personnel Management

OSC            Office of the Special Counsel  
SES            Senior Executive Service  
STAFFDIV    Staff Division  
U.S.C.        United States Code

**752-1-50    Responsibilities**

**A.    Heads of OPDIV and Offices are Responsible for:**

- (1) Implementing, supporting and providing oversight for the effective management of employee conduct and discipline;
- (2) Communicating information to the workforce regarding conduct requirements and disciplinary parameters;
- (3) Informing all employees of the existence of the OIG Hotline (Appendix C) which they can use to report violations of laws and regulations directly to OIG if they believe the normal supervisory channels are not appropriate;
- (4) Ensuring the promulgation of and adherence to the policy and procedural requirements of this Instruction, as well as the applicable provisions of established collective bargaining agreements as appropriate; and
- (5) Providing and implementing OPDIV/Office-wide guidance and instructions other than those outlined in this Instruction, as appropriate.

**B.    Director, Office of Human Resources is Responsible for:**

- (1) Developing and issuing Departmental policy and guidance regarding employee conduct and discipline;
- (2) Monitoring and evaluating the administration of discipline throughout the Department, and revising the disciplinary policy and procedures as appropriate;
- (3) Providing advice and assistance to OPDIV/Offices on the provisions of this Instruction (as well as related laws, rules and regulations) and on managing employee conduct and discipline;
- (4) Establishing and implementing reporting requirements for actions taken under this Instruction, as well as complying with reporting requirements established by OPM; and
- (5) Establishing overall parameters for Department-wide conduct/discipline training and coordinating the availability of related training opportunities.



C. Servicing Human Resources Offices/Centers (HRO/HRC) are Responsible for:

- (1) Advising supervisors on employee conduct issues and disciplinary options (including procedural/regulatory parameters);
- (2) Drafting or reviewing all disciplinary notices prior to issuance and applicable case files, to ensure reasonableness of penalty and statutory/regulatory compliance;
- (3) Advising employees and supervisors of their procedural rights and responsibilities relative to this Instruction (and applicable laws, regulations and negotiated agreements);
- (4) As necessary, consulting for legal sufficiency with the OGC on adverse action proposals and decisions, and providing technical assistance to the OGC on actions taken under this Instruction;
- (5) Maintaining disciplinary and adverse action files and an information system for tracking and periodically reporting the actions effected; and
- (6) Providing operational training support to ensure the workforce is sufficiently aware of the provisions of this Instruction.

D. Office of the General Counsel is Responsible for:

- (1) As necessary, providing reviews for legal sufficiency and overall appropriateness of adverse actions being considered, proposed, or taken under this Instruction, as necessary;
- (2) When appropriate, representing the Department during settlement negotiations, MSPB appeals, arbitrations and other activities related to the administrative and federal personnel litigation process; in accordance with established Departmental policy, coordinating settlements of actions taken under this Instruction which impose a financial obligation on the Department; and
- (3) As requested, reviewing and providing input on conduct/discipline training and related instructional guidance for Department supervisors and employees as needed.

E. Supervisors are Responsible for:

- (1) Establishing and maintaining a safe, productive, supportive and well-ordered work environment;

- (2) Providing a work environment free of prohibited personnel practices, including discrimination;
- (3) Advising employees regarding assigned duties and conduct expectations, which includes observing employee performance and conduct to ensure compliance with the standards of ethical conduct and other established work requirements;
- (4) Promptly investigating and documenting circumstances related to incidents of employee misconduct with guidance from the servicing HRO/HRC;
- (5) Counseling or disciplining, as appropriate, subordinate employees in a timely manner concerning questionable conduct, pointing out specific areas of deficiency or incident, impact of the behavior, specific improvements required, and the possible consequences of continued conduct deficiencies. Supervisory counseling should include an offer to assist the employee in improving his/her conduct and to be available, within reasonable limitations, for any further consultation that the employee may request. Advise the employee of the availability of the EAP for assistance in managing any alcohol, drug, or any other personal or work related problem including stress, financial, marital, family, legal or emotional difficulties. Refrain from making a determination as to whether or not the employee actually has a problem, diagnosing a suspected problem, and assuming the role of an EAP Counselor in dealing directly with the employee's problem.
- (6) Consult with an EAP Counselor, when appropriate, to obtain assistance in the process of referring an employee to EAP. The ERS will provide guidance in this area;
- (7) Consulting with the servicing HRO/HRC regarding employee misconduct and initiating appropriate, timely and relatively consistent corrective action as warranted; and
- (8) Recognizing and complying with the requirements of this Instruction and the applicable provisions of established collective bargaining agreements, as appropriate.
- (9) Any supervisor or management official who fails to report known or suspected criminal misconduct may be subject to disciplinary action. The supervisor must report misconduct to their supervisor, any management official, or directly to the OIG. Even though he/she may believe that disciplinary action is not warranted based upon circumstances of the case. (HHS Standards of Conduct, 45 CFR Part 73, Subpart M, Reporting Violations).

F. Employees are Responsible for:

- (1) Complying with Federal and Departmental standards of ethical conduct, completing any required training, complying with all established conduct and performance requirements, and requesting clarification if necessary;
- (2) Reporting incidents of waste, fraud, abuse, corruption and other misconduct to appropriate authorities; and
- (3) Cooperating in official investigations and furnishing testimony.

Employees will refrain from activity which is contrary to or in violation of the requirements of laws, rules, or regulations and report to his/her immediate supervisor (to other authority when appropriate) acts of misconduct by other U.S. Government employees.

Any employee who fails to adhere to the above is subject to disciplinary action.

752-1-60 **Policy**

A. General. Employees of the Department are expected to demonstrate high standards of integrity, both on and off the job, abiding by the Department's Standards of Conduct regulations (45 CFR Part 73) and other Federal and Departmental laws, rules and regulations. When established standards of conduct are violated, or the rules of the workplace are disregarded, corrective action is warranted to motivate employees to conform to acceptable behavioral standards and prevent prohibited and/or unsafe activities. Such corrective actions, when taken under this Instruction, should comport with applicable laws and regulations, should be administered with relative consistency and should be taken for such cause as will promote the efficiency of the service. Whenever appropriate, supervisors should consider using alternative discipline procedures in order to correct behavior while maintaining good and respectful working relationships.

B. Standard for Taking Action. Management must be able to show that the actions taken under this Instruction promote the efficiency of the service. To demonstrate this, the written notices of proposal and decision must clearly specify the charge(s) or reason(s) upon which the action is based, be able to prove the specific basis for the action by a preponderance of the evidence, be able to show the connection ("nexus") between the charge(s) and promotion of the efficiency of the service, and be able to establish the reasonableness of the action taken under the circumstances.

(1)**SES:** In taking a corrective action against an appointee in the SES, management's options are limited to a written reprimand or an adverse action covered by this Instruction (i.e., suspension for more than 14 days; removal from the Federal service); management may take an

adverse action against an SES employee only for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

C. Use and Choice of Discipline. Discipline should be imposed to correct improper employee conduct and to maintain order, morale and workplace safety throughout the workforce. After determining that misconduct occurred and that corrective action is warranted, discipline should be initiated as soon as practicable after the misconduct which prompted it and effected on a progressive and equitable basis as much as possible. These progressive applications of penalties are known as progressive discipline. This concept should be applied in all cases except where penalties are prescribed by law, rule, or regulation; or instances where management deems the misconduct is egregious enough to warrant more serious action up to and including removal.

Management officials must exercise reasonable judgment and consider all relevant factors, both mitigating and aggravating (as reflected in the guidance found at Appendix A), in determining the most appropriate corrective action for each situation, including whether alternative discipline should be an option in a given situation. As a guide for considering disciplinary options, the Department's *Guide to Corrective Action* is included as Appendix B to this Instruction, as is the *Guide to Alternative Discipline*. These *Guides* do not mandate the use of specific penalties in most disciplinary situations. Supervisors/managers retain full authority, except in limited circumstances (i.e., discipline prescribed by statute or the MSPB), to set penalties as they deem appropriate, based on the particular circumstances and specifications of the offense. Consultation and close coordination with the servicing HRO/HRC should ensure that a particular penalty is proportional to the offense and employees who commit similar offenses are treated with relative consistency.

## 752-1-70 **Guidelines**

A. General. Taking a corrective action against an employee is appropriate only when the employee has engaged in identifiable misconduct adversely affecting the efficiency of the service. Before initiating such action, management should conduct a thorough inquiry into any apparent offense (collecting information to the greatest extent practicable directly from the subject employee) to ensure the objective consideration of all relevant facts and aspects of the situation. Ordinarily, this inquiry will be conducted by the appropriate line supervisor or designee, with guidance from the servicing HRO/HRC. However, certain situations (particularly those involving possible criminal activity) warrant an investigation by the OIG or other law enforcement such as the Office of Internal Affairs, Federal Protective service or local police department.

Once it is established that an employee engaged in misconduct necessitating corrective action, a supervisor or other management official (using the guidance at Appendices A and B, and in consultation with the servicing HRO/HRC) must determine the action/penalty required to deter the recurrence of the unacceptable behavior.

Under the best of circumstances, minor misconduct should be corrected through informal supervisory counseling advising the employee promptly after the first instance of unacceptable behavior. The supervisor also may rely on notices of warning/admonishment and alternative discipline to convince the employee to change the undesirable behavior. These actions are less severe than or equivalent to the disciplinary and adverse actions described below, are less subject to review by third parties, and do not become part of the employee's permanent official employment record. Notices of warning/admonishment document the employee's misconduct, place the employee on notice regarding the behavior expected by management, and advise the employee that more serious corrective action (e.g., reprimand; suspension; removal) will result if the unacceptable behavior is not corrected. The use of such corrective actions does not constitute a "prior penalty" for disciplinary purposes to increase the severity of penalty for a subsequent offense; however, such corrective actions may be viewed as "prior notice." The use of alternative discipline, however, can constitute "prior penalty," either for a specific timeframe or for an indefinite period.

#### B. Means of Handling Misconduct

1) **Counseling or Verbal Warnings** should be used by the supervisor when:

Infractions are minor and infrequent; and

The supervisor determines that counseling and/or verbal warnings will likely preclude a recurrence of the misconduct.

Formal discipline is not warranted.

Warns that disciplinary action may result if the unacceptable conduct continues.

Is not a formal disciplinary action.

Is not maintained in the employee's OPF. That he/she may grieve the issuance of the letter of admonishment, caution or warning, by following the grievance procedures in HHS Instruction 771-3 or a negotiated grievance procedure, whichever is applicable.

2) **A Letter of Admonishment, Caution, or Warning** issued by the supervisor:

Serves as a written notice, and/or confirmation of counseling, and/or verbal warning that conduct is unacceptable.

Warns that disciplinary action may result if the unacceptable conduct continues.

Is not a formal disciplinary action (however may be considered appropriate corrective action).

Is not maintained in the employee's OPF.

The employee may grieve the issuance of the letter of admonishment, caution or warning, by following the grievance procedures in HHS Instruction 771-3 or a negotiated grievance procedure, whichever is applicable.

### **3) A Letter of Reprimand:**

Is a formal disciplinary action.

May be issued without formal advance notice or proposal.

Will inform the employee:

- Of the specific acts for which he/she is being reprimanded.
- That a copy will be maintained in his/her OPF for determined length of time not to exceed 2 years.
- That s/he may grieve the issuance of the letter of reprimand, by following the grievance procedures in HHS Instruction 771-3, or a negotiated grievance procedure, whichever is applicable.
- That a repetition of the offense or other improper conduct may lead to more severe disciplinary action, up to and including removal from the Federal service.

**4) A Disciplinary Action for a Suspension of 14 Calendar Days or Less,** the employee is entitled to:

A written notice which states the charge(s) and reason(s) for the proposed suspension specifically and in detail.

Be represented by an attorney or other eligible representative.

An amount of official time, up to 4 hours or in compliance with the applicable negotiated agreements, to secure affidavits and prepare a written and/or oral answer.

The opportunity to review all material relied upon to support the reason(s) for the proposal.

The opportunity to submit a written and/or oral reply, up to 7 days or in compliance with the applicable negotiated agreements, to the proposal and consideration of the reply before a decision is made.

A written decision before the effective date of the suspension (and at the earliest practicable date) which provides the reason(s) for the suspension, and the right to file a grievance or EEO complaint.

**5) An Adverse Action for a Suspension of More Than 14 Calendar days, the employee is entitled to:**

A written notice stating all charge(s) and all reason(s) for the proposed suspension at least 30 calendar days in advance of the effective date of any decision.

Be represented by an attorney or other eligible representative.

An amount of official time, up to 4 hours or in compliance with the applicable negotiated agreements, to secure affidavits and prepare a written and/or oral answer.

The opportunity to review all materials relied upon to support the reason(s) for the proposal.

The opportunity to submit a written and/or oral reply, up to 14 days or in compliance with the applicable negotiated agreements, to the proposal and consideration of the reply before a decision is made.

A written decision before the suspension is effective (and at the earliest practicable date) stating which of the reasons in the advance notice have been sustained, and which have not been sustained.

The right to appeal a decision to suspend for more than 14 calendar days to the MSPB or to grieve the matter through a negotiated grievance procedure when applicable, but not both.

The right to file an EEO complaint if the employee believes the action was taken as the result of discrimination.

• **Reduction in Grade and Pay** may be warranted as a result of misconduct:

When the employee cannot be continued in his/her present position;

Reassignment at his/her present grade is not possible or practical; and

When there is a reasonable belief that the misconduct will not or cannot continue at a lower grade level.

NOTE: Alternative discipline may be considered in all the above instances of discipline.

- **Removal** action is taken only:

Where removal is specified by law; or

As warranted by the misconduct in question.

Removal action is taken by following the procedures described above for A  
**Suspension of More Than 14 Calendar Days.**

In certain cases, Last Chance Agreement may be an appropriate option to consider.

NOTE: The procedural requirements described above for **A suspension of More Than 14 Calendar Days and Removal**, apply in processing a demotion as a result of misconduct. (These procedures do not apply to a demotion which is a result of a reclassification of a position or a voluntary downgrade.) **The above actions are taken only to promote the efficiency of the service and must be in consultation with the ERS.**

**Status During Notice Period.** Except as noted below, an employee will remain in an active duty status during the notice period provided he/she reports for duty to his/her assigned post of duty or requests leave in accordance with standard procedures.

**Nonduty, Pay Status.** When there is a reasonable cause to believe an employee has committed a crime for which sentence of imprisonment may be imposed, the Agency may place an employee in a nonduty status with pay for a time not to exceed 10 calendar days and provide the employee a reasonable time, but not less than 7 calendar days, to respond to a proposed action. This shortened notice period is commonly known as the crime provision. Upon being informed of such a crime, the supervisor should consult with their HRO/HRC before placing the employee in a non-duty status.

There may be other situations, such as where there is a threat to employees or property (or information/databases), when placing an employee in a nonduty, pay status is appropriate. In such cases, HRO/HRC should be consulted.

**Enforced Leave.** Placing an employee on leave without his/her consent usually constitutes a disciplinary action subject to the notice requirements described above. There are few exceptions. No supervisor should impose leave without first consulting the HRO/HRC.

752-1-80 **Records.** The servicing HRO/HRC shall maintain confidential disciplinary/adverse action case files; each file shall contain copies of the notice of proposed action, any written answer, a summary of any oral answer, the notice of decision (including the reasons for it), any order effecting the action, and any supporting material (e.g., witness statements; affidavits; documents; investigative reports). Disciplinary/adverse action files must be provided to various



parties (e.g., the MSPB; the affected employee and/or designated representative; a grievance examiner), but need only be furnished in response to a specific request. Records must be maintained and disposed of in accordance with government wide rule or regulation. This will include any management database maintained by the HRO/HRCs.

## PENALTY DETERMINATION

After establishing a sufficient basis for taking action (i.e., a preponderance of the evidence to support the charge(s); a nexus between the offense(s) and the employee's job or the agency's mission), the supervisor/manager, in consultation with the servicing HRO/HRC, must determine the appropriate penalty for the employee's misconduct.

The MSPB has determined that mitigation of an agency-imposed adverse action (removal, suspension of more than 14 calendar days, reduction in grade or pay, and furlough of less than 30 calendar days), is appropriate when the penalty is determined by the MSPB to be excessive, disproportionate to sustained charges, or arbitrary, capricious, or unreasonable. The MSPB in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), the MSPB identified a number of factors -- generally referred to as the "*Douglas Factors*" that must be considered in taking an adverse action. For all formal disciplinary actions, but especially adverse actions, supervisors/managers should be prepared to demonstrate that the following were considered:

1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. Consistency of the penalty with any applicable agency table of penalties;
8. The notoriety of the offense or its impact upon the reputation of the agency;
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;

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

Not all 12 *Douglas* factors will apply in every case. The relevant factors must be balanced in each case to arrive at the appropriate penalty. Frequently, some of the pertinent factors will weigh in the employee's favor while others may not (or even constitute aggravating factors).

It is advisable that when addressing an adverse action case and considering the pertinent mitigating and/or aggravating factors, you do so in conjunction with the assistance of your servicing HRO/HRC.

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## Guide for Corrective Action

This Guide is intended for use in determining the most appropriate charges and penalties for behavior(s) or action(s) which warrant corrective/remedial action and helps to ensure a relative consistency of penalties for like offenses. Users should consider the *Nature of Offense* column as a listing of general categories of offenses and **not use it as the specific terminology in framing charges**; it is not all-inclusive and is not intended to address every conceivable disciplinary situation. Managers should be careful to avoid force-fitting an offense or charge into an existing category. Rather, the Table is to be used as a guide for selecting a charge and penalty that fits a particular situation.

The Guide lists only formal disciplinary actions (i.e., those which become a matter of record in the employee's OPF). It does not mention oral warnings, counseling letters, and similar actions which are considered informal disciplinary actions and may be more appropriate for correcting minor offenses. The *First Offense* column, therefore, refers to the first offense for which formal discipline is being administered, although it may not be the first time a violation has occurred.

The offenses need not be identical or similar in order to support progressively more severe action against an employee. A second offense need not be related to the first offense to support a more severe penalty. The penalties suggested in the Guide are guidelines only; nothing precludes management from proposing and then imposing no penalty, or a lesser or more severe penalty than that offered by the Guide, as circumstances warrant. Such circumstances, however, should be fully documented in the decision letter. (Note that a deciding official cannot impose a more severe penalty than that originally proposed in the proposal letter.)

## DISCIPLINARY GUIDE

<b>HHS GUIDE FOR DISCIPLINARY PENALTIES</b>		
NATURE OF OFFENSE	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE
<b>1. FISCAL IRREGULARITIES</b> (Penalty depends on the monetary value, position held, personal benefit, and/or other pertinent factors.)		
a. Submission of (or causing or allowing the submission of) falsely stated time logs, leave forms, travel or purchase vouchers, payroll, loan, or other fiscal document(s).	Letter of Reprimand to Removal, if for administrative convenience or to avoid following required procedures.	Removal
	14-Day Suspension, if it results in personal benefit to another.	Removal
	Removal, if it results in personal benefit.	
b. Unauthorized and/or improper use of property, Government or other funds, or any other thing of value coming into an employee's custody as a result of employment.	14-Day Suspension to Removal	Removal
c. Failure to properly account for or make proper distribution of any property, Government or other funds, or any other thing of value coming into an employee's custody as a result of employment.	Letter of Reprimand to Removal	Removal
d. Concealment of (or failing to report) missing, lost, or misappropriated funds, or other fiscal irregularities.	Letter of Reprimand to Removal	14-Day Suspension to Removal

<b>2. FALSE STATEMENT(S)/INCORRECT OFFICIAL DOCUMENTS</b> (False statements or entries in connection with fiscal matters and documents are covered in 1. above.)		
a. Deliberate falsification of an application for employment, or other personal history record by omission or by making a false entry.  Note: If an incorrect or inaccurate entry or statement is determined to be unintentional, other (non-disciplinary) action should be taken.	Removal, if it would have adversely affected selection for appointment or promotion.	
	Letter of Reprimand to 14-Day Suspension, if it would not have adversely affected selection for appointment or promotion.	14-Day Suspension to Removal
b. Misrepresentation, falsification, or concealment of material facts or documents in connection with an official matter, including an investigation.	Letter of Reprimand to Removal	Removal
c. Knowingly and willfully making an incorrect entry on an official document or approving an incorrect official document.	Letter of Reprimand to Removal	14-Day Suspension to Removal
<b>3. CONDUCT PREJUDICIAL TO THE BEST INTERESTS OF THE SERVICE</b>		
a. Conduct which causes the employee to be indicted or charged with a criminal offense which is related directly to the duties of the employee's position or the mission of the Agency and for which a sentence of imprisonment may be imposed.	Indefinite Suspension (Until the outcome of the legal action is known and/or until the completion of appropriate administrative action.)	
b. Conduct which causes the employee to be convicted of a criminal charge which is related directly to the duties of the employee's position or the mission of the Agency.	Removal	
c. Off duty conduct which adversely affects the	Letter of Reprimand	Removal

employee's job performance or trustworthiness, or adversely affects the ability of the Agency to accomplish its mission or otherwise identifiable nexus to the employee's position.	to Removal	
d. Infamous or notoriously disgraceful conduct.	Removal	
e. Concealing, removing, mutilating, altering or destroying Government records.	Letter of Reprimand to Removal	14-Day Suspension to Removal
f. Malicious or intentional damage or loss of Government- owned or Government-leased property.	Letter of Reprimand to Removal	14-Day Suspension to Removal
g. Using public office for private gain.	14-Day Suspension to Removal	Removal
h. Unethical or improper use of official authority or credentials.	Letter of Reprimand to Removal	Removal
i. Unauthorized disclosure or use of (or failure to safeguard) information protected by the Privacy Act or other official, sensitive, or confidential information.	Letter of Reprimand to Removal	Removal
j. Having a direct or indirect financial interest that an employee could reasonably expect to be in conflict or appear to be in conflict with his or her official duties and responsibilities. (When a conflict of financial interest occurs that is inadvertent and that could not be reasonably anticipated by the employee, the situation would normally be handled by divestiture or recusation rather than disciplinary action.)	Letter of Reprimand to Removal	Removal
k. Engaging in outside employment or other activities without required prior approval.	Letter of Reprimand to 5- Day Suspension	14-Day Suspension to Removal
l. Improperly soliciting or accepting, directly or indirectly, a gift from any individual or establishment seeking or having a contractual or business relationship with the Department.	5-Day Suspension to Removal	Removal
m. Improperly soliciting a contribution from another employee for a gift to an official superior, making a donation as a gift to an official superior, or accepting a gift from an employee receiving less	Letter of Reprimand to Removal	Removal

pay.		
n. Borrowing money from a subordinate employee, securing a subordinate's endorsement on a loan, or otherwise having a subordinate assume the financial responsibility of a superior.	Letter of Reprimand to Removal	Removal
o. Use of (or authorizing the use of) employees, or Government owned, leased or provided property, facilities, services or credit cards, for inappropriate or non-official purposes.	Letter of Reprimand to Removal	5-Day Suspension to Removal
p. Willful use of (or authorizing the use of) any Government-owned or Government-leased passenger vehicles or aircraft for other than official purposes.	30-Day Suspension to Removal [31 U.S.C. 1349(b) mandates a <u>minimum</u> penalty of a one month suspension for unofficial use of Government passenger carrying vehicles or aircraft.]	Removal
q. Use of (or authorizing the use of) other Government- owned or Government-leased vehicles such as trucks, aircraft, boats or other motor vehicles for other than official purposes.	30-Day Suspension to Removal	Removal
r. Carrying of unauthorized passengers in Government- owned or Government-leased vehicles such as trucks, aircraft, boats or other motor vehicles for other than official purposes.	Letter of Reprimand to 14-Day Suspension	14-Day Suspension to Removal
s. Unauthorized use, removal or possession of a thing of value belonging to another employee or private citizen.	Letter of Reprimand to Removal	Removal
t. Misuse of the internet; misuse of the electronic mail; visiting websites or downloading material from the internet during duty time for non-official use; sending electronic mail for unauthorized purposes; misuse of data bases and other software for personal gain.	Reprimand to Removal	3-Day Suspension to Removal
u. Fighting, threatening, attempting to inflict or	5-Day Suspension to	14-Day Suspension to



inflicting bodily harm while on Government premises and/or when in a duty status.	Removal	Removal
v. Use of abusive, offensive, unprofessional, distracting, or otherwise unacceptable language, gestures, or other conduct; quarreling; creating a disturbance or disruption; or horseplay.	Letter of Reprimand to 14-Day Suspension	5-Day Suspension to Removal
w. Use of slanderous, malicious, derogatory, discourteous, or otherwise inappropriate language, gestures, or other conduct toward employees, supervisors, or the public.	Letter of Reprimand to Removal	5-Day Suspension to Removal
x. Failure to pay just debts in a timely and proper manner.	Letter of Reprimand to 14-Day Suspension	1-Day Suspension to Removal
y. Gambling on duty or in work areas.	Letter of Reprimand to Removal	Removal
z. Participating in a strike, work stoppage, slowdown, sickout, or similar activity.	Removal	
<b>4. FAILURE/REFUSAL TO FOLLOW INSTRUCTION</b>		
a. Negligence, including the careless failure to comply with rules, regulations, written procedures, or proper supervisory instructions.	Letter of Reprimand to 14-Day Suspension	5-Day Suspension to Removal
b. Deliberate or malicious refusal to comply with rules, regulations, written procedures, or proper supervisory instructions.	Letter of Reprimand to Removal	14-Day Suspension to Removal
c. Refusal to provide information to authorized representatives of the Department or other Government Agencies when called upon, when the inquiry relates to official matters and the information is obtained in the course of employment or as the result of relationships incident to such employment.	Letter of Reprimand to Removal	Removal
d. Failure to report for duty as detailed, transferred, or reassigned.	Removal	
e. Failure to submit required statements of financial interests and outside employment.	Letter of Reprimand to 3-Day Suspension	5-Day Suspension to Removal

<b>5. NEGLECT OF DUTY</b>		
Careless/negligent work, loafing, sleeping on duty, wasting time, conducting personal business while on duty.	Letter of Reprimand to Removal	5-Day Suspension to Removal
<b>6. ATTENDANCE-RELATED OFFENSES</b> (Penalty will depend on the circumstances, including length, frequency, and nature of position. To support disciplinary action, tardiness and unauthorized absences from the work place must be charged to AWOL on the employee's Time and Attendance (T &A) Report.)		
a. Unexcused tardiness, including delay in: (1) reporting at the scheduled starting time, (2) returning from lunch or break periods, and (3) returning from an authorized absence from the work station.	Letter of Reprimand to 1-Day Suspension	5-Day Suspension to Removal
b. Unauthorized absence, including leaving the workstation without permission or before the end of the workday. [Time periods at right refer to the accumulated total amount of AWOL for each offense (i.e., disciplinary action proposed) rather than for each instance or occurrence of unauthorized absence. For example, if an employee is AWOL on three separate occasions and the total amount of AWOL shown on the T&As is more than 8 hours but less than 5 workdays, the proposed penalty for a first offense would normally be a suspension of from 1 to 14 days.]	Absences of 8 Hours or Less	
	Letter of Reprimand to 5- Day Suspension	5-Day Suspension to Removal
	Absences of More Than 8 Hours But Less Than 5 Workdays	
	1-Day Suspension to 14-Day Suspension	14-Day Suspension to Removal
	Absences of 5 Workdays or More	
	14-Day Suspension to Removal	Removal
<b>7. INTOXICANTS -- Alcohol and Spirits</b> (Agencies must assure the requirements of alcohol abuse programs are met before taking action.)		
a. Unauthorized use of intoxicants while on duty, on Government property or Government-controlled property or premises where official duties are performed.	Letter of Reprimand to 14-Day Suspension	30-Day Suspension to Removal
b. Reporting to or being on duty while under the influence of intoxicants.	Letter of Reprimand to 30-Day Suspension	30-Day Suspension to Removal
c. Operating a Government-owned or Government-leased vehicle (or privately-owned vehicle on official business) while under the influence of	Removal [If a penalty of less than removal is	

intoxicants.	determined to be appropriate, agencies should (at a minimum) suspend the employee's official driving privileges for a period of one year.]	
<b>8. ILLEGAL DRUGS/DRUG PARAPHERNALIA/CONTROLLED SUBSTANCES</b> (HHS will <u>not</u> initiate disciplinary action when an employee -- (1) Voluntarily identifies him/herself as a user of illegal drugs prior to being identified through other means, (2) Obtains counseling and rehabilitation through EAP and (3) Thereafter refrains from illegal drug use. In <u>all</u> other circumstances, agencies must make appropriate referrals to the EAP <u>and</u> initiate appropriate disciplinary action.)		
a. Possession of an illegal drug, drug paraphernalia, or unauthorized controlled substance while on duty, on Government property or Government-controlled property, or on premises where official duties are performed.	5-Day Suspension to Removal	Removal
b. Use of an illegal drug or unauthorized controlled substance while on duty, on Government property or Government-controlled property, or on premises where official duties are performed.	14-Day Suspension to Removal	Removal
c. Reporting to or being on duty while under the influence of an illegal drug or unauthorized controlled substance.	14-Day Suspension to Removal	Removal
d. Sale or distribution of an illegal drug or controlled substance.	Removal	
e. Operating a Government-owned or Government-leased vehicle (or privately-owned vehicle on official business) while under the influence of an illegal drug.	Removal	
f. Interfering with, or refusing or failing to submit to a properly ordered or authorized drug test, including substituting, adulterating, or otherwise tampering with a urine sample.	Removal	
g. Use of an illegal drug or unauthorized controlled substance during non-duty hours and on non-work premises.	Letter of Reprimand to Removal	Removal

<b>9. PROHIBITED POLITICAL ACTIVITY</b>		
Engaging in the types of political activity prohibited by law or by Office of Personnel Management regulations.	Removal, 5 U.S.C. 7326	Note: Referral to Office of Special Counsel is required.  Only the MSPB may mitigated to a penalty of not less than 30 days;
<b>10. SAFETY AND HEALTH VIOLATIONS</b> (Penalty should take into consideration whether danger to persons or property is involved.)		
a. Failure to report an accident and/or injury as required.	Letter of Reprimand to 14-Day Suspension	14-Day Suspension to Removal
b. Failure or refusal to wear/use required protective equipment (e.g., seat belts, earplugs, eye protection, etc.).	Letter of Reprimand to 14-Day Suspension	14-Day Suspension to Removal
c. Operation of a Government-owned or Government- leased vehicle (or privately-owned vehicle while on official business) without an appropriate State driver's license.	5-Day Suspension to Removal	Removal
d. Failure or refusal to observe and/or enforce Safety and Health regulations or to perform duties in a safe manner.	Letter of Reprimand to Removal	5-Day Suspension to Removal
<b>11. DISCRIMINATORY PRACTICES</b> (Penalty should take into consideration whether violation is willful/deliberate, or careless/negligent.)		
a. Acting or failing to act on an official matter (including a personnel action) in a manner which improperly takes into consideration an individual's political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition. [This includes discrimination for or against any employee or applicant for employment prohibited by 42 U.S.C. 2000e-16; 29 U.S.C. 631 or 633a; 29 U.S.C. 206(d); 29 U.S.C. 791; or any other law, rule, or regulation.]	5-Day Suspension to Removal	Removal
b. Any reprisal or retaliation action against an individual involved in the EEO complaint process.	5-Day Suspension to Removal	Removal
c. Use of remarks which relate to and insult or	Letter of Reprimand	14-Day Suspension to

denigrate an individual's race, color, religion, national origin, sex, marital status, age, or handicapping condition.	to 30-Day Suspension	Removal
d. Negligence or insensitive conduct with respect to an individual's race, color, religion, national origin, sex, marital status, age, or handicapping condition which is determined to be discriminatory and where there is no other finding of overt discrimination.	Letter of Reprimand to 5-Day Suspension	5-Day Suspension to Removal
e. Failure to take appropriate action regarding allegations or findings of discriminatory practices.	5-Day Suspension to Removal	Removal
<b>12. SEXUAL MISCONDUCT</b>		
a. Actual or attempted sexual assault (e.g., rape)	Removal	
b. Inappropriate and/or unwelcome touching or other physical contact.	14-Day Suspension to Removal	30-Day Suspension to Removal
c. Pressure for (or official action based on) sexual favors, including taking action favorable to an employee because of the granting of a sexual favor or denying an action favorable to an employee because of the withholding of a sexual favor.	30-Day Suspension to Removal	Removal
d. Inappropriate and/or unwelcome teasing, jokes, actions, gestures, display of visual material of a sexual nature or remarks of a sexual nature.	Letter of Reprimand to 30-Day Suspension	14-Day Suspension to Removal
<b>13. PROHIBITED PERSONNEL PRACTICES</b> (Not elsewhere covered.)		
Abuse of authority and commission of a prohibited personnel practice covered by 5 U.S.C. 2302.	Letter of Reprimand to Removal	Removal
<b>14. SCIENTIFIC MISCONDUCT</b>	Letter of Reprimand to Removal	Removal

## OFFICE OF INSPECTOR GENERAL INFORMATION

### Report Fraud

<b>Phone:</b> 1-800-HHS-TIPS (1-800-447-8477)	<b>E-Mail:</b> HHS Tips@oig.hhs.gov
<b>Fax:</b> 1-800-223-8164	<b>Mail:</b> Office of Inspector General Department of Health and Human Services Attn: HOTLINE
<b>TTY:</b> 1-800-377-4950	PO Box 23489 Washington, DC 20026

### Reporting Fraud

All HHS and contractor employees have a responsibility to assist in combating fraud, waste and abuse in all departmental programs. As such you are encouraged to report matters involving fraud, waste and mismanagement in any departmental program(s) to OIG. To assist you, OIG maintains a hotline which offers a confidential means for reporting vital information.

**Information is for official use only** (For information on confidentiality please contact the hotline and ask about our confidentiality source program).

Each caller is encouraged to assist the OIG by providing information on how they can be contacted for additional information but **caller may remain anonymous**.

**To the best of your ability, please provide the following information when contacting the Hotline:**

#### **Type of complaint:**

- Medicare Part-A
- Medicare Part-B
- Child Support Enforcement
- National Institute Of Health
- Indian Health Service
- Food And Drug Administration
- Centers For Disease Control And Prevention

Substance Abuse And Mental Health Services Administration  
 Health Resources And Services Administration  
 Aid To Children And Families  
 All Other HHS Agencies Or Related Programs

**HHS department or program being affected by your allegation of fraud waste or abuse/mismanagement:**

Administration for Children and Families (ACF)  
 Child Support Enforcement (CSE)  
 Centers for Medicare & Medicaid Services (CMS)  
 Food and Drug Administration (FDA)  
 National Institutes of Health (NIH)  
 Office of Disease Control and Prevention (CDC)  
 Indian Health Service (IHS)  
 Office of Inspector General (OIG)  
 Office of the Secretary (OS)  
 Health Resources and Services Administration (HRSA)  
 Substance Abuse and Mental Health Administration (SAMSHA)  
 Administration on Aging (AOA)  
 Agency for Health Care Policy and Research  
 Other (please specify)

Please provide the following, if you would like your referral to be submitted anonymously please indicate in your correspondence or phone call:	Subject/Person/Business/Department that allegation is against:
Your Name Your Street Address Your City/County Your State Your Zip Code Your email Address	Name of Subject Title of Subject (if applicable) Subject's Street Address Subject's City/County Subject's State Subject's Zip Code  Please provide a brief summary relating to your allegation.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
GUIDE FOR IMPLEMENTING AN ALTERNATIVE DISCIPLINE PROGRAM**

**Prepared by:**

**Office of Human Resources  
Assistant Secretary for Administration  
and Management**

**September 10, 2002**

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**I. What is alternative discipline?**

Alternative discipline is an alternative to traditional penalties for employee misconduct. It is a form of alternative dispute resolution that can be used to effectively resolve, reduce or even eliminate workplace disputes that arise from circumstances where disciplinary action is appropriate. The traditional penalties which alternative discipline generally replace are suspensions and removals. Last chance agreements (LCA) are a form of alternative discipline.

**II. How does alternative discipline work?**

The option to offer alternative discipline to an employee is the right of management, generally the supervisor or manager with authority to propose or decide disciplinary action against the employee. The process allows management and an employee who has committed an infraction to negotiate an alternative form of corrective action in lieu of traditional discipline, if some basic criteria are first met. The agreement between management and the employee is formalized in a written "Alternative Discipline Agreement" which details all of the terms and conditions used to resolve the situation.



**III. What are the criteria for considering whether alternative discipline may be appropriate?**

The traditional penalty for the misconduct is suspension or removal, and there is not a statutory/regulatory penalty for the infraction (i.e., a 30 day suspension for a first offense of "willful misuse of a government vehicle");

The employee acknowledges responsibility for the behavior(s) giving rise to the need for corrective/disciplinary action, expresses remorse for such behavior and agrees not repeat the behavior(s);

The manager determines that alternative discipline has a good probability of preventing further misconduct by the employee;

The employee agrees to waive all grievance, appeal and/or EEO complaint rights with respect to the particular action. The employee also agrees to waive grievance and appeal rights in connection with the particular instance of misconduct even if traditional discipline is later imposed because the employee fails to fulfill the terms of the alternative discipline agreement. However, an employee may not waive prospective EEO rights; and,

The use of alternative discipline in cases involving bargaining unit employees must not be precluded by the negotiated agreement. Note: Where a term of an alternative discipline agreement affects a condition of employment of one or more bargaining unit employees (other than employee whose conduct is at issue), management is obligated to notify the Union and give it the opportunity to exercise its representational rights.

**IV. How does alternative discipline benefit the organization and the employee?**

Less negative impact on supervisor/employee relationship. The interactive process of developing an alternative discipline agreement between the manager and employee can provide common ground for preserving or repairing the employer-employee relationship which is frequently unrecoverable after traditional discipline is imposed. The employee can be viewed as an individual who is willing to take responsibility for his/her actions and management can be viewed as willing to work with the employee and help restore or rebuild a cooperative work relationship. In addition, by actively participating in the process, an employee is more likely to fulfill the expectations agreed to and modify his/her behavior appropriately.

Productivity of employee. The organization retains the services of an employee instead of losing productivity in cases where the employee would have been given a traditional suspension. There is little or no interruption to the daily flow of work and no need to temporarily inconvenience co-workers who may have to pitch in while an employee is on suspension.

Quicker closure. Because cases resolved by alternative discipline agreements are closed more quickly than traditional cases and because they include waivers of grievance, appeal and complaint rights, the matter is resolved and closed with the signing of the agreement. There are no lingering issues or litigation to disrupt the work of the organization or the relationship between the employee, his/her supervisor and the organization as a whole.

Addresses the real purpose of discipline. In the Federal government, discipline is meant to be remedial and corrective rather than punitive. Alternative discipline, with its focus on a collaborative, constructive outcome, is truly remedial.

Time and resource savings. As described more fully in the next section, alternative discipline may be offered at any stage of the disciplinary process. When alternative discipline is used before a traditional penalty has been proposed or decided, a significant savings in time and resources can be realized for management, the employee and the servicing human resources office. The traditional disciplinary process can be protracted and even if alternative discipline is used after a decision has been made, additional time and resources to investigate and defend against complaints, grievances and appeals can be saved since the employee must waive all rights to contest the action.

**V. What other considerations should be taken into account?**

An agency may consider excluding some forms of misconduct from the alternative discipline process altogether because of the seriousness of the infractions (e.g., workplace violence, discrimination, reprisal/retaliation, and sexual harassment).

Decisions regarding whether to offer alternative discipline to an employee must be equitable. Like many other decisions, managers are expected to consider all relevant information and weigh the pros and cons of various options. With the criteria outlined above, a manager, with the assistance of his/her Labor/Employee Relations Specialist, should be able to arrive at an appropriate conclusion regarding whether to offer alternative discipline in a given situation.

**VI. At what stage(s) of the disciplinary process may alternative discipline be considered?**

Alternative discipline may be initiated instead of traditional discipline or at any stage of the traditional process.

Instead of traditional discipline: If management decides to offer an employee alternative discipline instead of initiating the traditional disciplinary process, the servicing Employee/Labor Relations Specialist must first prepare a written analysis for management and the employee which identifies: 1. the employee's misconduct; 2. the law, rule, regulation, policy or procedure that was violated; and, 3. the traditional penalty that would have been proposed in the absence of alternative discipline.

The employee must be provided an opportunity to review the written analysis in order to make an informed choice between traditional and alternative discipline. If the employee chooses alternative discipline prior to the initiation of the traditional disciplinary process, he/she must be informed that in choosing alternative discipline at this stage, he/she waives Chapter 75 due process rights. The alternative discipline agreement must contain an explicit description of these waivers. The employee must also agree that if he/she fails to fulfill any term or condition of the agreement, the traditional penalty identified in the written analysis will be imposed without additional due process, including the right to

grieve or appeal. See Exhibit 1.

During the traditional disciplinary process: Alternative discipline may also be offered at any time after the traditional disciplinary process has begun. For example, it may be offered after a notice of proposed suspension or removal has been issued, after the employee's oral and/or written reply to a proposal or after a decision has been reached. See Exhibit 2.

**VII. What are some examples of alternatives to traditional disciplinary penalties?**

There are a number of options that, singly or in combination, may be appropriate as alternatives to traditional penalties. These examples are not all inclusive and supervisors, employee relations offices and employees are encouraged to be creative and innovative in using the options on the following page as well as others while remaining within the confines of law and statute.

- Donation of accrued annual leave to an approved recipient in the leave donor program or to the Agency's leave bank.

- Leave without pay (LWOP) in lieu of suspension. (Note: an FLSA-covered employee cannot report to work during an LWOP period.)

- Paper suspension, in which an SF-50 documenting a suspension of a specific number of days is placed in the employee's Official Personnel File, but the employee does not actually serve a suspension. He/she remains in active duty status, performing work and getting paid. The SF-50 could be removed from the OPF after an agreed upon period of time (2 years, 4 years).

- Performance of unpaid, off-duty community service related to the offense. For example, instead of a 30 day suspension for drinking alcohol on the job, the employee agrees to perform 120 hours of community service in an alcohol abuse center. This must be documented to ensure that the employee performed the community service work.

- Agreement to seek and actively participate in counseling through the Employee Assistance Program or other organization. This must be documented to ensure that the employee attends and participates and can be done without violating the employee's privacy.

- Holding all or part of a suspension in abeyance for periods of time (generally one to two years) while the employee demonstrates acceptable conduct and/or performance.

- Writing, developing and/or presenting a variety of e-mails, memoranda, instructional guides, training modules, etc., that explains a specific aspect of proper conduct and the potential consequences for violating approved standards.

- Making restitution to either the Agency or the Department of Treasury for monies owed to the government for unauthorized personal long-distance phone calls, credit card charges, time and attendance abuse, "wasting" official time, etc.

**VIII. What is the appropriate format for alternative discipline agreements and what standard terms should be included?**

The samples in this Guide are examples of the recommended format for such agreements. They are presented in a commonly used settlement agreement format and clearly delineate the terms agreed to by management and the employee. Alternative discipline agreements, like settlement agreements, are considered to be contracts between parties. As such, whatever is spelled out in the document frames any future argument as to the meaning of various terms. Therefore, terms should be explicit, particularly those which explain what the employee will do in lieu of traditional discipline and the rights he/she is waiving.

At a minimum, all alternative discipline agreements should include the following:

1. A description of the misconduct and a statement that the disciplinary analysis resulted in a determination that a specified "traditional" penalty is warranted under formal disciplinary procedures. If alternative discipline is agreed to after initiation of the traditional process, attach the proposal and decision letters, as appropriate, to the agreement.
2. A statement in which the employee admits that he/she engaged in the improper conduct, recognizes the misconduct was unacceptable, and promises that these acts will not occur again.
3. A description of the terms and conditions that must be met for the employee to satisfactorily fulfill the agreement. The terms must include the timeframe(s) in which the employee must satisfy the agreement.
4. A clause addressing the retention of records associated with the agreement (such as the case file and a copy of the agreement). In most HHS agencies, 4 years is the retention period for disciplinary action files. The agreement should specify the agency's retention period.
5. A statement in which the employee agrees that if he/she fails to satisfy the terms and conditions of the agreement, the traditional penalty specified in the agreement will be effected immediately.
6. A statement that the agreement was entered into voluntarily and that the employee had the opportunity to seek the advice of a personal representative.
7. A statement that the misconduct addressed through the alternative discipline agreement constitutes an offense and may be used to support any future progressive disciplinary action(s), traditional or alternative.
8. A statement that the terms and conditions of the agreement are confidential but that they may be shared with parties who have an official need to know.
9. A statement that the terms and conditions of the agreement are nonprecedential, meaning they are specific to the employee, and may not be cited for comparison purposes in any other case.
10. If applicable, an acknowledgment that no salary or wage compensation can be requested for any off-duty volunteer service and that such service is not covered by Workers' Compensation.
11. The signatures of the parties to the agreement. At a minimum, this will include the employee and the supervisor or other management official authorized to enter into such an agreement. It may also include the employee's representative and/or the Employee/Labor Relations Specialist.

**IX. How do you know when an alternative discipline process has concluded?**

The terms and conditions of the alternative discipline agreement are considered fulfilled when the supervisor, in consultation with the Employee/Labor Relations Specialist, determines that the employee has satisfied the terms of the agreement.

When the terms and conditions of the alternative discipline agreement are satisfied, the supervisor or Employee/Labor Relations Specialist must certify such in writing to the employee. See the "Final Disposition" section of the sample alternative discipline agreements.

If the employee is unable to fulfill the terms and conditions of the alternative discipline agreement due to circumstances beyond his/her control, the parties should revise the agreement. For example, an employee would be unable to meet the terms of an agreement if it required the employee to perform 200 hours of community service within a six-month period, but the employee became incapacitated for five or six months due to an automobile accident.

If the employee fails to satisfy the terms and conditions of the agreement, the supervisor or Employee/Labor Relations Specialist will immediately issue a violation notice to the employee. The notice will inform the employee that the agreement has been breached and the traditional penalty specified in the agreement will be effected immediately. See Exhibit 3.

#### EXHIBIT 1

#### SAMPLE ALTERNATIVE DISCIPLINE AGREEMENT

#### **PRIOR TO INITIATION OF TRADITIONAL DISCIPLINE**

#### ALTERNATIVE DISCIPLINE AGREEMENT BETWEEN [EMPLOYEE'S NAME] AND [OPDIV/STAFFDIV]

The PARTIES to this Agreement are [Employee's Name], title, duty station (hereafter referred to as the EMPLOYEE) and the [OpDiv/ StaffDiv] (hereafter referred to as the AGENCY).

This Agreement is entered into as an alternative to the initiation of a proposal to suspend the EMPLOYEE without pay for 3 calendar days based on the EMPLOYEE'S misconduct. Under the terms of this Agreement, the EMPLOYEE acknowledges that:

he/she was absent without approved leave (AWOL) for a total of 20 hours during pay periods 21 and 22, 2000.

Based on the above, and in consideration of other factors, the AGENCY has concluded that the issuance of a proposal to suspend the EMPLOYEE from duty without pay for 3 calendar days is warranted. Formal adverse action procedures include: the issuance of a letter of proposed suspension; the EMPLOYEE'S opportunity to reply orally and/or in writing to the charges set forth in the proposal; the issuance of a decision based on the proposal and the EMPLOYEE'S oral and/or written response to the charges (including any mitigating factors presented by the EMPLOYEE); and, the EMPLOYEE'S right to file a negotiated/administrative grievance regarding the action taken by the AGENCY.

However, the PARTIES have agreed to the following as an alternative to the AGENCY initiating formal adverse action procedures:

1. The EMPLOYEE admits that he/she committed the misconduct cited above; recognizes

the misconduct was unacceptable; and, promises that these acts will not occur in the future.

2. The EMPLOYEE agrees to donate 24 hours of annual leave to an approved leave donor recipient within 30 days of the date of the last signature on this Agreement and to provide his/her supervisor, [name], with proof that such a donation was made, no later than 10 days after making the donation.
3. The EMPLOYEE acknowledges that his/her failure to comply with #2 above will result in the automatic imposition of a 3 calendar day suspension without pay (without the issuance of proposal to suspend letter, an opportunity to reply, a written decision letter and the right to grieve the AGENCY'S action).
4. The AGENCY agrees that if the EMPLOYEE fully complies with the condition specified in #2 above, the AGENCY will not impose the 3 calendar day suspension.
5. The EMPLOYEE understands that an additional offense of this nature, or any other misconduct on his/her part, may result in a proposal for more severe disciplinary action, up to and including a proposal to remove him/her from the Federal service. The EMPLOYEE further understands that the misconduct cited in this Agreement, as well as the resulting Agreement, may be cited as a first offense in determining any subsequent disciplinary action.
6. The EMPLOYEE understands that this Agreement does not preclude the AGENCY from initiating and/or taking appropriate action regarding any other misconduct not covered by this Agreement.
7. The EMPLOYEE agrees to waive any and all rights to appeal, grieve, complain of, or otherwise contest actions relating to or arising out of his/her employment prior to the effective date of this agreement. The EMPLOYEE may not in any way contest the imposition of traditional discipline arising from a breach of this Agreement; however, he/she may contest a determination that one or more terms of this Agreement has been breached. The EMPLOYEE cannot waive prospective EEO complaint rights.\*
8. The EMPLOYEE understands that this Agreement will be maintained with the disciplinary files in the AGENCY'S Employee Relations office for a period of 4 years from the date of the last signature on this Agreement in compliance with Employee Relations record-keeping requirements.
9. The PARTIES understand that this Agreement is not confidential and will be used in any manner necessary to carry out the terms. However, it will be shared only with those who have an official need to know.
10. The PARTIES understand that the terms and conditions of this Agreement are nonprecedential, meaning they are specific to the EMPLOYEE, and may not be cited for comparison to another employee's alternative discipline agreement or traditional disciplinary action.
11. There are no other terms to this Agreement other than those expressly written here.
12. The EMPLOYEE agrees that he/she has had an opportunity to consult with a representative on the terms and conditions of this Agreement and has had an opportunity to clarify any terms or conditions which were not understood by him/her.
13. The EMPLOYEE understands that he/she is fully responsible for any and all attorney's fees related to his/her representation in any part of this matter.

14. The PARTIES understand the terms of this Agreement and willingly enter into it. This Agreement becomes effective upon the date of the last signature of the PARTIES involved.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

FINAL DISPOSITION:

The terms and conditions of this Agreement were:   Met  
Not Met (see attached violation notice)

\_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
Date

---

\* Note: Where an employee is covered by the Age Discrimination in Employment Act of 1967 (ADEA), as amended, this term should contain an explicit waiver of an ADEA claim under the Older Workers Benefit Protection Act, as outlined in *Oubre v. Entergy Operations, Inc.*, 117 S. Ct. 1466 (1998), regardless of whether the employee has raised the issue. (Although the EEOC has stopped short of requiring this language in agreements where an employee has NOT raised an age discrimination claim, we believe it is prudent based on the wording in *Oubre*.) The following language may be used for this waiver:

Under the Age Discrimination in Employment Act and the Older Workers Benefit Protection Act, the EMPLOYEE has had 21 days in which to consider the terms and conditions of this Agreement and the right to consult with legal counsel. The EMPLOYEE acknowledges that he/she has been advised by the AGENCY that he/she should consult with an attorney. The EMPLOYEE has 7 days from the signing of this Agreement to rescind it. If the EMPLOYEE wishes to rescind the Agreement, he/she must notify his/her supervisor of this decision in writing.

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## EXHIBIT 2

### SAMPLE ALTERNATIVE DISCIPLINE AGREEMENT

#### **AFTER TRADITIONAL DISCIPLINE HAS BEEN INITIATED**

ALTERNATIVE DISCIPLINE AGREEMENT BETWEEN [EMPLOYEE'S NAME]  
AND [OPDIV/STAFFDIV]

The PARTIES to this Agreement are [Employee's Name], title, duty station (hereafter referred to as the EMPLOYEE) and the [OpDiv/ StaffDiv] (hereafter referred to as the AGENCY).

This Agreement is entered into as an alternative to proceeding with the formal disciplinary process already underway. Under the terms of this Agreement, the EMPLOYEE acknowledges that:

he/she used a government-owned computer and printer, as well as more than 40 hours of official time, to prepare publicity and marketing materials for a personal business venture. As the supervisor of the staff, he/she is responsible for adhering to proper standards of conduct and for being a positive role model for employees.

Based on the above, and in consideration of other factors, the AGENCY initiated formal disciplinary procedures and, on [date], issued the EMPLOYEE a notice of proposed suspension for 21 calendar days. The EMPLOYEE submitted a timely written reply to the notice of proposed suspension and, upon consideration of the EMPLOYEE'S acceptance of responsibility for his/her conduct and remorse for damaging the implicit trust placed in him/her as a supervisor, the AGENCY offered alternative discipline in lieu of completing the formal disciplinary process, which would include a written decision letter and the opportunity to appeal, grieve, complain of or otherwise contest the final action.

As a result, the PARTIES have agreed to the following as an alternative to the AGENCY completing formal adverse action procedures:

1. The EMPLOYEE admits that he/she committed the misconduct cited above; recognizes the misconduct was unacceptable; and, promises that these acts will not occur in the future.
2. The EMPLOYEE agrees to make restitution in the amount of \$1050.00 (the equivalent of one week's gross salary) within 90 days of the date of last signature on this Agreement and to provide his/her supervisor, [name], with proof that such a restitution was made, no later than 15 days after making the final restitution payment. Payment will be made to the AGENCY'S finance office at [address].
3. The EMPLOYEE agrees to perform 40 hours of off-duty, unpaid community service with a public service organization, such as Public Television, within 90 days of the date of the last signature on this Agreement. The EMPLOYEE agrees to provide the supervisor with proof that the community service was completed.
4. The EMPLOYEE agrees to write and transmit an anonymous e-mail to all AGENCY employee's at his/her location reiterating the standards of conduct with respect to his/her misconduct and describing the possible consequences of misconduct of this nature. The AGENCY agrees to provide necessary support to enable an anonymous e-mail to be sent. This e-mail will be sent within 14 days of the date of the last signature of this AGREEMENT.
5. The EMPLOYEE acknowledges that his/her failure to comply with #2, #3 and/or #4 above will result in the automatic imposition of a 21 calendar day suspension without pay



- (without a written decision letter and the right to appeal the AGENCY'S action).
6. The EMPLOYEE understands that an additional offense of this nature, or any other misconduct on his/her part, may result in a proposal for more severe disciplinary action, up to and including a proposal to remove him/her from the Federal service. The EMPLOYEE further understands that the misconduct cited in this Agreement, as well as the resulting Agreement, may be cited as a first offense in determining any subsequent disciplinary action.
  7. The EMPLOYEE understands that this Agreement does not preclude the AGENCY from initiating and/or taking appropriate action regarding any other misconduct not covered by this Agreement.
  8. The EMPLOYEE agrees to waive any and all rights to appeal, grieve, complain of, or otherwise contest actions relating to or arising out of his/her employment prior to the effective date of this agreement. The EMPLOYEE may not in any way contest the imposition of traditional discipline arising from a breach of this Agreement; however, he/she may contest a determination that one or more terms of this Agreement has been breached. The EMPLOYEE cannot waive prospective EEO complaint rights.\*
  9. The EMPLOYEE understands that this Agreement will be maintained with the disciplinary files in the AGENCY'S Employee Relations office for a period of 4 years from the date of the last signature on this Agreement in compliance with Employee Relations record-keeping requirements.
  10. The PARTIES understand that this Agreement is not confidential and will be used in any manner necessary to carry out the terms. However, it will be shared only with those who have an official need to know.
  11. The PARTIES understand that the terms and conditions of this Agreement are nonprecedential, meaning they are specific to the EMPLOYEE, and may not be cited for comparison to another employee's alternative discipline agreement or traditional disciplinary action.
  12. There are no other terms to this Agreement other than those expressly written here.
  13. The EMPLOYEE agrees that he/she has had an opportunity to consult with a representative on the terms and conditions of this Agreement and has had an opportunity to clarify any terms or conditions which were not understood by him/her.
  14. The EMPLOYEE understands that he/she is fully responsible for any and all attorney's fees related to his/her representation in any part of this matter.
  15. The PARTIES understand the terms of this Agreement and willingly enter into it. This Agreement becomes effective upon the date of the last signature of the PARTIES involved.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

FINAL DISPOSITION:

The terms and conditions of this Agreement were:   Met  
Not Met (see attached violation notice)

---

Supervisor's Signature

---

Date

---

\* Note: Where an employee is covered by the Age Discrimination in Employment Act of 1967 (ADEA), as amended, this term should contain an explicit waiver of an ADEA claim under the Older Workers Benefit Protection Act, as outlined in *Oubre v. Entergy Operations, Inc.*, 117 S. Ct. 1466 (1998), regardless of whether the employee has raised the issue. (Although the EEOC has stopped short of requiring this language in agreements where an employee has NOT raised an age discrimination claim, we believe it is prudent based on the wording in *Oubre*.) The following language may be used for this waiver:

Under the Age Discrimination in Employment Act and the Older Worker=s Benefit Protection Act, the EMPLOYEE has: 21 days in which to consider the terms and conditions of this Agreement and the right to consult with legal counsel. The EMPLOYEE acknowledges that he/she has been advised by the AGENCY that he should consult with an attorney. The EMPLOYEE has 7 days from the signing of this Agreement to rescind it. If the EMPLOYEE wishes to rescind the Agreement, he/she must notify his/her supervisor, in writing, of this decision.

---

## NOTICE OF VIOLATION OF ALTERNATIVE DISCIPLINE AGREEMENT

This is notice that you violated/failed to fulfill a condition of the Alternative Discipline Agreement, dated \_\_\_\_\_, in which you agreed to:

\_\_\_\_\_  
Donate 40 hours of annual leave to an approved recipient of the leave donor program by [date]. [Describe all terms and/or conditions violated/not fulfilled.]

You failed to comply with your agreement to complete this item as an alternative to your being suspended from duty and pay for [ ] calendar days. You did not make a good faith attempt to complete this item, nor did you come to me or the employee relations office to discuss any reasons for your noncompliance.

In accordance with the terms of the Agreement, you will be suspended from duty without pay for [ ] calendar days beginning [date] and will return to duty on [date]. The personnel documents reflecting this action will follow.

Last revised: November 26, 2002

U.S. Department of Health & Human Services · 200 Independence Avenue, S.W. · Washington, D.C.  
20201

# APPENDIX 7

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, DC 20201

June 23, 2011

## MEMORANDUM

TO: Heads of Operating Divisions  
Heads of Staff Divisions

FROM:

SUBJECT: Policy Issuance: Prohibition of Tobacco Use in HHS-Occupied Facilities

In line with the President's June 22, 2009 signing of H.R.1256, Family Smoking Prevention and Tobacco Control Act, and the Department of Health and Human Services (HHS) Secretary's November 10, 2010 announcement of the Department's Tobacco Control Strategic Action Plan to reduce tobacco-related death and disease, it is paramount that the Department of Health and Human Services (HHS) lead by example and make all HHS properties tobacco free. Taking this action will protect the health and safety of all HHS employees, contractors and visitors and will serve as a role model for workplaces everywhere.

Effective July 1, 2011, in accordance with the October 11, 2001 delegation to the Assistant Secretary of Administration regarding administrative management and human resources authorities, it is the policy of HHS to prohibit the use of all tobacco products (including cigarettes, cigars, pipes, smokeless tobacco, or any other tobacco products, and e-cigarettes) at all times in its facilities. This policy applies to all interior space owned, rented or wholly leased by HHS; all outside property or grounds owned or leased by HHS, including parking areas; private vehicles while on HHS property; and government vehicles-except to the extent that the prohibition interferes with traditional beliefs and ceremonial practices.

To the extent this policy does not conflict with existing labor-management collective bargaining agreements, this policy is in effect July 1, 2011. Furthermore, the Office for Facilities Management and Policy and all Labor Relations offices in the Department are directed immediately to take all actions necessary to give this policy full effect in all Department facilities and all managers are directed to enforce the policy.

Compliance with this policy will demonstrate HHS' commitment to set the example in protecting the health and safety of all employees, contractors and visitors. Please take appropriate measures to ensure compliance with this policy and communicate this policy to your employees, visitors, and other Federal or non-Federal tenants at HHS workplaces.

During the next few months, HHS will be involved in a number of activities focused on this tobacco-free properties initiative. Educational and promotional efforts will be provided in

support\_ofthe policy's implementation. We know that quitting tobacco can be difficult for even the most motivated people, and we want to help employees succeed. Since January 1, 2011, the Office of Personnel Management has made tobacco use cessation resources available to all Federal employees by requiring all Federal Employees Health Benefits plans to provide comprehensive, barrier free coverage including counseling and medication. These benefits must be provided with no payments or coinsurance and are not subject to deductibles, annual or life time dollar limits. We share OPM's concern for our colleagues who suffer tobacco addiction and call attention to the following cessation resources:

Cessation Resources:

Tobacco Use Cessation Quitline: 1-800 QUIT NOW

Federal Occupational Health: <http://www.foh.dhhs.gov/library/factsheets/SmokingCessation.pdf>

Centers for Disease Control: [http://www.cdc.gov/tobacco/quit\\_smoking/index.htm](http://www.cdc.gov/tobacco/quit_smoking/index.htm)

Indian Health Services: [http://www.ihs.gov/epi/index.cfm?module=epi\\_tobacco\\_resources](http://www.ihs.gov/epi/index.cfm?module=epi_tobacco_resources)

National Institutes of Health: <http://health.nih.gov/topic/SmokingCessation> · National Cancer

Institute: <http://www.smokefree.gov>

Office of Personnel Management: <http://www.opm.gov/insure/healthlnosmoking/>

# APPENDIX 8



LOCAL 3553

## AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

AFFILIATED WITH THE AFL CIO  
P.O. Box 56608  
New Orleans, LA 70156-6608



OFFICE: (504) 553-5988  
FAX: (504) 553-5989

PRESIDENT (504) 388-6403  
afge3553@yahoo.com

## GRIEVANCE: CHIEF STEWARD

### AUTHORIZATION FOR UNION ASSISTANCE

The American Federation of Government Employees, AFL-CIO, Local 3553, 1601 Perdido Street, VAMC Building 2, Suite 311, New Orleans, LA is hereby granted full authority to act for and on my behalf as it relates to investigations, grievances, and appeals. This includes the right to have access to any records to any records pertaining to me, which are contained in a system or records maintained by any Agency of the Federal Government.

I, \_\_\_\_\_, (print) acknowledge by this signed authorization, that a representative has explained, and I have accepted; that my responsibility is to make all scheduled meetings, and participate appropriately in my individual rights issue along with the designated/assigned representative in the processing of my request for assistance.

My specific matter is: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Home/Cell phone number (required) Business phone extension

.....  
**AFGE LOCAL 3553 USE ONLY**

\_\_\_\_\_  
Assigned/Designated Representative Signature Date

\_\_\_\_\_  
Cellular Phone number (required) Business phone/extension

\_\_\_\_\_  
Chief Steward or Representative Authorizing Signature Date

**AFGE LOCAL 3553  
FAX NUMBER 504-553-5989**



**AMERICAN FEDERATION OF GOVERNMENT**

**EMPLOYESS, AFL-CIO**

**Southeast Louisiana Veterans Health Care System**

**1601 Perdido Street**

**New Orleans, La. 70112**

**504-585-2899 Phone**

**COMPLAINT FORM**

What happened? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By signing this complaint form, I fully understand that this not a grievance or EEO complaint. I also acknowledge that the Executive Board of AFGE Local 3553 and/or Steward designated by the Executive Board will review my complaint for legitimacy. If this complaint has merit, (Violation of the Master Agreement/or EEO) an Officer or Steward of AFGE Local will inform me.

\*Special Note\* this process may take several days

\_\_\_\_\_  
Employee Name

\_\_\_\_\_  
Date

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**AFGE LOCAL 3553  
FAX NUMBER 504-553-5989**

[illegible]

pg. \_\_\_\_\_ of \_\_\_\_\_

AFGE LOCAL 3553  
FAX NUMBER 504-553-5989

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