

**Labor Agreement**  
**Between**  
**The**  
**American Federation of Government Employees**  
**Local 286**



**And**  
**USDOJ, Executive Office for Immigration Review**



New York Immigration Court  
Executive Office for Immigration Review and  
American Federation of Government Employees, Local 286

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## **Preamble**

This is an agreement between the American Federation of Government Employees (AFGE) Local 286, hereinafter referred to as the "Union" and the New York Immigration Court, Office of the Chief Immigration Judge (OCIJ), Executive Office for Immigration Review (EOIR), U.S. Department of Justice (DOJ or Agency), hereinafter referred to as the "Employer" or "Management."

This Agreement covers all matters relating to the terms and conditions of employment of the New York Immigration Court non-professional employees that were of concern to the parties at the time they entered into this Agreement and sets forth the entire understanding between the parties. This Agreement supersedes any and all prior agreements or understandings between the parties pertaining to the subject matters and any conflicting past practices covered herein. The parties are now bound by the terms of this Agreement and they mutually agree to honor the letter and spirit of the Agreement.

## **ARTICLE 1 Representation**

The unit to which this Agreement applies is the group of all non-professional employees employed by the Office of the Chief Immigration Judge, New York Immigration Court, Executive Office for Immigration Review, New York, New York, excluding all summer hire employees, temporary employees hired with appointments not to exceed one year, professional employees, management officials, supervisors; and employees described in 5 U.S.C. 7112 (b)(2), (3), (4), (6) and (7).

## **ARTICLE 2 Provisions of Laws, Regulations, and Past Practices**

In the administration of all matters covered by this Agreement, the Parties and employees are governed by: existing or future laws, rules and government-wide regulations; existing Employer policies, procedures and practices; and all existing agreements or past practices in effect at the signing of this agreement and which are not in conflict with this Agreement.

**ARTICLE 3**  
**Rights of the Employer**

**SECTION 1**

A. Subject to subsection (B) of this section, nothing in this Agreement shall affect the authority of any management official of the Employer:

To determine the mission, budget, organization, number of employees, and internal security practices of the Employer; and

In accordance with applicable laws:

To hire, assign, direct, layoff, and retain employees of the Employer, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

To assign work, to make determinations with respect to contracting out, and to determine the personnel by which the Employer's operations shall be conducted;

With respect to filling positions, to make selections for appointments from -

Among properly ranked and certified candidates for promotion; or

Any other appropriate source; and

to take whatever actions may be necessary to carry out the Employer's mission during emergencies.

B. Nothing in this section shall preclude the Parties from negotiating-

At the election of the employer on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

Procedures which management officials of the Employer will observe in exercising any authority under this section; or

Appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

## SECTION 2

In a dispute over the application of any provision set forth in this Agreement, the position of the Employer will prevail pending resolution of the dispute by means of a negotiated grievance procedure or other appropriate means.

## SECTION 3

The above mentioned rights of the Employer are not to be interpreted as being all-inclusive, but merely indicate the type of rights, which belong to and are inherent to the Employer. It is understood that any rights the Employer had prior to the signing of this Agreement are retained by the Employer and will be exercised in accordance with this Agreement, where appropriate.

### **ARTICLE 4 Dissemination of Information**

#### Directives

The Employer will provide electronic access for all employees to the Code of Federal Regulations, the U.S. Code, written Agency policies affecting conditions of employment of the bargaining unit (including the OCIJ Operating Policies and Procedures Memoranda), and this Agreement. Employees may print such documents or sections of such documents on Agency printers in accordance with Agency policy.

#### Information Regarding Bargaining Unit Employees:

Upon request, but not more frequently than once per quarter, the Employer will provide to the union a computer printout of all the New York Immigration Court employees identified in EOIR's computer system as being in the bargaining unit. The list will include the name, grade, series and title of each individual.

### **ARTICLE 5 Employee Rights and Responsibilities**

#### SECTION 1

**Union Membership:** Employees in the unit are protected by the Federal Service Labor-Management Relations Statute in the exercise of their right freely and without fear of penalty or reprisal, to form, join, and assist an employee organization, or to refrain from such activity. This agreement does not prevent an employee, regardless of employee organization membership, from bringing matters of personal concern to the attention of appropriate officials in accordance with applicable laws, regulations, or agency policies, or from choosing his or her own representative in a statutory appeal action.

Nothing in this agreement shall require an employee to become or to remain a member of a labor organization, or to pay money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions. Management shall not discipline or otherwise discriminate against any employee because he or she has filed a complaint or given testimony under the Federal Service Labor-Management Relations Statute. The Union and Management agree that no interference, restraint, coercion, or discrimination will be practiced to encourage or discourage membership in the Union.

## SECTION 2

**Informing Employees:** Management shall take such action consistent with law or regulations, as may be required, in order to inform employees of their rights and obligations, as prescribed in the Federal Service Labor-Management Relations Statute.

## SECTION 3

A. An Exclusive representative of an appropriate unit will be given the opportunity to be represented at:

1. any formal discussion between one or more representatives of the Employer and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or,
2. any examination of an employee in the unit by a representative of the Employee in connection with an investigation if-
  - i. the employee reasonably believes that the examination may result in disciplinary action against the employee; and
  - ii. the employee requests representation.

B. The Employer will inform the employee of the rights in section A at least once a year.

C. If an employee requests a representative of the Union during an investigatory interview and one is not immediately available, the Employer will delay the investigation for a reasonable period of time to permit the presence of a Union representative.



## SECTION 4

If an employee needs to consult briefly with a Union representative during work hours, the employee must obtain permission from their immediate supervisor prior to leaving the worksite. Any meetings between employees and Union representatives during work hours will be of a short duration.

## SECTION 5

In the administration of this Agreement, all employees will be treated in a fair and equitable manner, without regard to their education level, position, seniority, grade level, or other potentially defining factors.

## **ARTICLE 6** **Employee Personnel Records**

### SECTION 1

#### Official Personnel Files of Employees

The Human Resources Office maintains the Official Personnel Files (OPF) for bargaining unit employees.

### SECTION 2

#### Employee Review of Official Personnel File

Employees may request a copy of their OPF once every year. This allows an employee to review the OPF to ensure the file accurately reflects employment history.

### SECTION 3

#### Supervisory Files

Once every quarter, bargaining unit employees and/or their designated Union representative may request to review and copy any unofficial personnel file maintained on him or her by their immediate supervisor.

## SECTION 4

### Written Records

Counseling by the supervisor will be conducted in private. An employee will be given the opportunity to initial any written documents discussed during the counseling session. An employee's initials on any written documents indicates that the employee has seen the document and does not indicate agreement or disagreement with its contents.

## **ARTICLE 7 Employee Morale**

The Parties acknowledge that employee morale is beneficial to the accomplishment and efficiency of court operations; therefore, the Parties will establish a committee to discuss concerns and make recommendations on resolving issues.

## **ARTICLE 8 Employee Orientation**

The Union will be provided twenty (20) minutes during the orientation of any new employee(s) to conduct a presentation. The presentation shall not involve a solicitation of membership or a discussion of internal union business.

## **ARTICLE 9 Probationary Employees**

### SECTION 1

The Employer agrees to provide probationary employees with the opportunity to develop and demonstrate their proficiency. During this probationary period, communication between the supervisor and the employee is encouraged.

### SECTION 2

When the Employer decides to terminate a bargaining unit employee serving a probationary or trial period because their performance or conduct fails to demonstrate fitness or qualifications for continued employment, the Employer will terminate the employee's services by notifying the employee in writing, as to why they are being separated and the effective date of the action. The information in the notice as

to why the employee is being terminated will, at a minimum, consist of the Employer's conclusion as to the inadequacies of their performance or conduct.

### SECTION 3

When the Employer proposes to terminate a bargaining unit employee serving a probationary or trial period for reasons based in whole or in part on conditions arising before appointment, the notice of proposed action will be in accordance with applicable laws, rules and regulations.

## **ARTICLE 10 Dues Withholding**

### SECTION 1

#### Purpose

Pursuant to 5 U.S.C. §7115, this agreement establishes procedures under which employees included in the bargaining unit will voluntarily authorize allotment of membership dues to the Union through payroll deductions.

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

### SECTION 2

#### Definitions

Dues: The regular, periodic amount or percentage determined by the Union to be required of the member to maintain a good standing in the Union. This amount or percentage will be certified by the Union on the SF-1187 and excludes special assessments, back dues, fines, and similar items not considered to be dues.

Employee/Labor Relations (ELR) Unit: U. S. Department of Justice, Executive Office for Immigration Review, Office of the General Counsel, Employee/Labor Relations Office, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.

SF-1187: Standard Form 1187, "Request for Payroll Deductions for Labor Organization Dues".

SF-1188: Standard Form 1188, "Cancellation of Payroll Deductions for Labor Organization Dues".

### SECTION 3

#### Eligible Employees

To be eligible to make voluntary allotment for the payment of Union dues, an employee must:

- A. be in the Unit covered by this Agreement; and
- B. request the allotment on an SF-1187 that has been certified by the authorized union official.

### SECTION 4

#### Responsibilities of the Union

The Union shall:

- A. inform and educate its members on the voluntary nature of the dues allotment program, including conditions governing revocation of allotments;
- B. distribute the SF-1187 to its members;
- C. certify on the SF-1187 the amount of dues to be withheld each bi-weekly pay period;
- D. forward the completed SF-1187s to the ELR Unit;
- E. furnish written notification to the ELR Unit, concerning the names and titles of Local Union officials authorized to certify the SF-1187; and,
- F. provide the ELR Unit with written notification concerning:
  - 1. changes in the amount of Union dues; and
  - 2. the name of any employee who has been expelled or ceases to be a member in good standing in the Union.

### SECTION 5

#### Responsibility of the ELR Unit

The ELR Unit shall:

Upon receipt of a certified SF-1187 from the Union, verify that the employee is or is not in the Unit covered by the Agreement and promptly forward the SF-1187 to the appropriate personnel for processing or return it to the Union with an explanation of its rejection.

The Parties recognize that the National Finance Center (NFC) provides the Union with a report of dues withheld from employees paychecks. This report is normally provided bi-weekly. The Employer agrees to use best efforts to ensure that this report is provided. The Union agrees to cooperate by ensuring that information provided to the NFC for the Union is accurate such as the name of the individual to whom the report should be sent.

## SECTION 6

### Procedures

It is agreed that the following procedures will govern the voluntary allotment of dues:

#### A. Withholding of Dues:

1. Upon receipt of a certified SF-1187 from the Union, the ELR Unit will review and, if valid, forward the SF-1187 to the appropriate personnel. Allotments will be effected as soon as possible, usually at the beginning of the first pay period following receipt of the form.
2. If an employee is in a non-pay status for an entire biweekly pay period or if an employee's net pay is insufficient to cover the minimum dues amount, no deductions will be made. No retroactive withholding will be made for pay periods in which the employee's net pay is insufficient to cover the minimum dues amount.

#### B. Changes in Dues:

1. The amount or percentage of dues certified on the original SF-1187 will remain unchanged until an authorized Union official provides written certification to the ELR Unit that the amount or percentage of dues has changed. New SF-1187s will not be required.
2. Changes in the amount of the allotment due to changes in the amount of Union dues will not be made more than once in any twelve-month period.

#### C. Termination of Allotments: Allotments by employees will be terminated:

##### 1. Automatically:

- a. upon loss of exclusive recognition by the Union;

- b. when an employee ceases to be eligible for inclusion in the Unit covered by this Agreement; and,
- c. when an employee is expelled or ceases to be a member in good standing of the Union.

2. Voluntarily:

An employee may submit a written request, SF-1188, to the ELR Unit at any time. As provided in 5 U. S. C. §7115 (a), no allotment may be revoked for a period of one year. A revocation received on or before the first anniversary of the date the employee authorized withholding will be effective the first pay period that begins on or after the anniversary date.

**ARTICLE 11**  
**Official Time**

SECTION 1

Recognition of Designated Union Officers

The Employer agrees to recognize Union representatives to be designated by the Union. Within fifteen (15) days of the execution of this Agreement, the Union will provide the Employer with a list of the names of each of its designated Union representatives. The Union shall update this list within ten (10) workdays of any changes.

SECTION 2

Representational Activities Covered by Official Time

Unless official time has been authorized by law or this Agreement, and approved according to procedures outlined in this Article, representational activity will be performed on the non-duty time of the employees involved. Duly recognized officers of the Union will be granted official time, if otherwise in an official duty status, as specified in this Article, to engage in the following representational activities for bargaining unit employees:

- (1) Consultation with bargaining unit employees;
- (2) Preparation and presentation for Informal grievances;
- (3) Preparation and presentation for Formal grievances;
- (4) Arbitration preparation if presenting the case before the arbitrator;
- (5) Arbitration hearings;
- (6) Formal discussions;
- (7) Weingarten meetings;
- (8) Unfair labor practices;

- (9) Preparation and communication with the Employer on matters covered by this Agreement;
- (10) Representational activities related to proposed disciplinary, adverse action, or performance-based actions; and
- (11) Preparation and communication with the Employer on matters not covered by this Agreement.

Official time includes time spent on the telephone. Official time for collective bargaining agreement negotiations will be negotiated separately and is not covered above. Official time for representational activities other than those listed above may be requested from the Employer.

### SECTION 3

#### Scheduling of Official Time

Supervisors or other designated officials will release Union representatives from their official work assignment on official Government time, provided that workload conditions permit and/or other means of accomplishing the scheduled work are available, and after advising their representatives of the conditions of (and any limitations to) the release.

### SECTION 4

#### Limitations on Official Time

The Union recognizes its responsibility to ensure that Union representatives do not abuse their authority by unduly absenting themselves from their assigned work areas. The Union agrees that in the interest of efficient government, all efforts will be made to use approved time expeditiously, and that the effect on the work schedule of the Union representative's office/unit is a factor in the decision as to when official time may be authorized. Generally, one employee will serve as a representative in a particular case or complaint at any one time on official time. The supervisor, or designee, shall propose an alternative time in those instances in which requested official time is denied.

A designated representative must obtain the permission from the supervisor of any employee he or she wishes to contact on the employee's duty time regarding a representational matter. The represented employee's supervisor or designee makes the final determination for the release of the employee.

The Employer is under no obligation to pay Union representatives for representational time spent when they are not scheduled to work. No overtime or premium pay is payable for the purpose of representational activities.

### SECTION 5

#### Abuse of Official Time

In those instances in which a Union representative's use of official time does not comply with the provisions of this Agreement, the Employer will initially discuss the matter with the Union representative to find a satisfactory solution. Abuse of official time could lead to disciplinary action.

## SECTION 6

### Approving and Accounting for Official Time

Each Union official will maintain a bi-weekly account that will show the authorized total time spent on representational duties and the specific purpose for usage. The appropriate supervisor shall indicate approval by initialing on the log for each period of time spent on approved representational duties. The log shall be forwarded to the ELR Unit in Falls Church through the local supervisor on a bi-weekly basis no later than the Monday following the end of each pay period. When no official time has been used, the Union official need not submit a report.

## SECTION 7

### Miscellaneous

There shall be no restraint, interference, coercion, or discrimination against Union representatives because of the performance of their approved official representational duties. A Union representative shall not use official time in his or her position as a Union representative for matters outside the scope authorized by this Agreement and will conduct his or her approved business promptly. Union representatives may receive, but not solicit, complaints and/or grievances of employees on official or duty time. Agency staff, equipment, or property will be used in conjunction with or as a result of representational function only as provided in this Agreement.

## SECTION 8

### Official Time Bank

The Union shall receive 300 hours, annually, for official time for representational duties in accordance with the requirements of this Article. This "bank of time" shall cover a 12-month period, and shall commence with the date of the signing of this Agreement. All accrued official time remaining at the end of each anniversary year shall expire. The Employer agrees that, upon reaching a remaining balance of 50 hours, the Union may reopen Section 8 of this Article to negotiate regarding an additional number of hours for the remainder of the 12-month period.

## SECTION 9

### Official Time for Training



Union representatives will be authorized an aggregate of 120 hours of excused absence annually during the life of this Agreement to attend labor relations training of mutual benefit to the Employer and the Union. Requests will be submitted by the Union president to his or her immediate supervisor at least two (2) work weeks in advance of the requested training. Requests to the Employer will be in writing and include an official copy of the agenda and description of the training, and a written statement of how the training will be mutually beneficial to the Parties. All other costs related to training permitted under this Section will be borne by the Union. The Employer may consider requests for additional time under this Section, but it is under no legal or contractual obligation to grant additional time.

## **ARTICLE 12**

### **Union Space and Equipment**

#### **SECTION 1**

##### **Facilities**

Designated Union representatives may use their normally assigned work space, computer, printer and telephone at no cost for representational duties as described in this Agreement. The Employer will also provide the Union with access to a fax machine and copier to be used for representational purposes only; a distribution box in the Agency's mailroom designated "AFGE/Union;" and a lockable filing cabinet. Representational functions do not include the conduct of internal Union business.

#### **SECTION 2**

##### **Meetings**

The Union will be provided reasonable access to space suitable for private calls and/or meetings as needed for representational activities. Upon advance request, the Employer will also provide the use of a conference room for the union to conduct union meetings during lunch periods and other non-duty hours for internal Union activities subject to operational and security needs.

The Employer also agrees to provide the Union with space on each floor next to all internal agency boards for union bulletin boards.

#### **SECTION 3**

##### **Proper Use of Facilities and Services**

Under applicable laws, regulations, and policies, Union representatives are responsible for ensuring that the items listed above will be used only for official use and authorized purpose, and will not be put to uses that would reflect adversely on the Employer.

## **ARTICLE 13**

### **Grievance Procedure**

#### **SECTION 1**

##### **Purpose**

The purpose of this Article is to establish a procedure for the prompt and equitable settlement of grievances.

#### **SECTION 2**

##### **Available Procedure and Election**

This will be the only procedure available to bargaining unit employees for the processing and disposition of grievances as defined in Section 3 of this Article, except employees may choose between this procedure or the appropriate statutory appeal procedure to address complaints concerning matters for which a statutory choice of procedure exists. For the purposes of this Section and pursuant to applicable sections in 5 U.S.C. §7121 of the Act, an employee shall be deemed to have exercised their option under this section when the employee files a timely notice of appeal under the appellate procedure or files a formal written grievance under Section 6, step 2, of this Article. Matters not covered by this article that fall within the scope of the Agency Grievance Procedure may be grieved under that procedure.

#### **SECTION 3**

##### **Definitions**

A grievance means any complaint by: (a) any bargaining unit employee concerning any matter relating to the employment of the employee; (b) the Union concerning any matter relating to the employment of any bargaining unit employee; or (c) any bargaining unit employee, the Union or the Employer concerning the effect or interpretation, or a claim of breach of this Agreement, or any claimed violation, misinterpretation or misapplication of any law, rule, or regulation affecting conditions of employment.

#### **SECTION 4**

##### **Exclusions**

The following matters are specifically excluded from the grievance procedure:

- a. An alleged violation relating to prohibited political activities under 5 U.S.C. §§ 7321 through 7326;
- b. Retirement, life insurance, or health insurance;

- c. A suspension or removal for national security reasons under 5 U.S.C. § 7532;
- d. Issues regarding any examination, certification or appointment;
- e. The classification of any position that does not result in the reduction-in-grade or pay of an employee;
- f. Non-selection for promotion from a group of properly ranked and certified candidates, unless the complaint alleges pre-selection or that a pattern of discrimination exists;
- g. An action terminating a temporary promotion;
- h. The discharge of a probationary or temporary employee; and
- i. Allegations of prohibited personnel practices under 5 U.S.C. § 2302.

## SECTION 5

### Requirements for All Grievances

All grievances filed under this Agreement must be in writing and include the following:

- a. The issue or occurrence which gives rise to the grievance;
- b. If appropriate, the provision(s) of law, regulations, or this Agreement which allegedly has been misinterpreted, misapplied, or violated and the date on which such violation is alleged to have occurred;
- c. The individual(s) alleged to have committed the violation;
- d. Any relevant evidence or information including written presentations of the facts;
- e. The remedy sought;
- f. Whether a meeting is requested;
- g. The name of the grievant and the name and telephone number of the grievant's Union representative if applicable; and
- h. The results of the informal resolution - step 1 of the grievance procedure described in Section 6, Step 1.

Any information not provided in the written grievance must be presented to the other Party prior to the arbitration hearing.

## SECTION 6

### Employee Grievance Procedures

#### Step 1 - Informal Resolution

The aggrieved employee(s) and/or designated representative will file a grievance with the Court Administrator or his or her designee within thirty (30) days after receipt of the notice of action, occurrence of the incident, or knowledge of the incident (whichever occurs first). Grievances of a continuing nature can be grieved at any time. The grievance must be in writing. If a meeting is requested, it will be held as soon as possible but no later than ten (10) days from receipt of the grievance. The Court Administrator or his or her designee will render a decision, in writing, within ten (10) days of the meeting or within ten (10) days of the filing of the grievance if no meeting is requested.

#### Step 2 - Formal Resolution

The Assistant Chief Immigration Judge (ACIJ) with responsibility for the New York Immigration Court receives all formal grievances in writing with a copy served simultaneously to the Employee/Labor Relations Unit in the Office of General Counsel. The grievance must be filed by the employee and/or designated representative within seven (7) days after the decision rendered at the First Step. If a meeting is requested, it will generally take place within ten (10) days of the filing of the formal grievance. Meetings may be held by video conference or teleconference. A written decision will be issued within thirty (30) days of the meeting or, if no meeting is held, within thirty (30) days of the filing of the formal grievance. The written decision will address whether the subject matter of the grievance was grievable if applicable. A copy of the decision will be provided to the Union.

## SECTION 7

### Employer and Union Grievances

Any grievance by the Employer or the Union, in its institutional capacity, must be filed within thirty (30) days after receipt of notice of the action, occurrence of the incident, or knowledge of the incident whichever occurs first. Grievances of a continuing nature can be grieved at any time. Grievances filed by the Employer should be filed with the Union President. Grievances filed by the Union will be filed with the ACIJ with responsibility for the New York Immigration Court, with a copy served simultaneously to the Employee/Labor Relations Unit in the Office of General Counsel. If a meeting is requested, it will be held within fifteen (15) days of receipt of the grievance. Meetings may be held by video conference or teleconference. The party responsible for responding to the grievance shall issue a decision within thirty (30) days of the meeting or, if no meeting is requested, within thirty (30) days of receipt of the grievance. The written decision will address whether the subject matter of the grievance was grievable if applicable.

## SECTION 8

### Invoking Arbitration

Only the Employer or the Union may advance a grievance to arbitration. Arbitration must be invoked under the procedures detailed in Article 14.

## SECTION 9

### Union Representation

An employee has the right to be accompanied, represented, and/or advised by the Union with respect to the grievance process outlined in this Article. An employee may also choose to file a grievance on their own behalf. The Union has the right to be present at any formal discussions or meetings concerning any grievance filed by a bargaining unit member.

## SECTION 10

### Extension of Time Limits, Calculation of Time Frames, and Filing Dates

- a. Any time limits may be extended upon mutual agreement of the parties in writing provided that such request is presented before the end of the prescribed time limit.
- b. All time frames included in this Article are calendar days unless otherwise indicated. If a deadline under this Article falls on a weekend or Federal holiday, then the following business day is the deadline.
- c. A document will be considered filed on the date that it is postmarked, faxed, e-mailed, or sent by commercial carrier. In the case of personal delivery, the date filed will be the date of delivery to the intended recipient. When documents are filed by mail or commercial carrier, a courtesy copy should normally be provided by e-mail.

## **ARTICLE 14**

### **Arbitration**

## SECTION 1

### Establishment of Permanent Panel of Arbitrators

Within 45 days of the effective date of this Agreement, the Parties shall establish a permanent panel of at least five (5) arbitrators to hear cases. Management and the Union will each select five (5) arbitrators for a total of ten (10). Each Party may select their five (5) arbitrators by any method they

deem appropriate including using the Federal Mediation and Conciliation Service or the American Arbitration Association. All of the ten (10) arbitrators selected by the Parties should have Federal sector arbitration experience and must be located within a 150 mile radius of the New York Immigration Court. Once the ten (10) arbitrators have been selected, the Parties will take turns selecting arbitrators to be on the permanent panel. The Party to select first will be determined by a coin toss.

Arbitrators serving on the Panel shall remain unless mutually agreed otherwise except that either Party, without cause, may unilaterally remove one (1) arbitrator each year during the month of October. Notice of removal must be in writing and provided to the other Party. If either party decides to remove unilaterally an arbitrator from the panel, the process described above will be used to replace the removed arbitrator.

## SECTION 2

### Procedure for Invoking Arbitration

Only the Union or the Employer may invoke arbitration on grievances filed under Article 13 of this Agreement. To invoke arbitration, the Union must notify the Assistant Chief Immigration Judge with responsibility over the New York Immigration Court and the Employer must notify the Local President of the Union. This notice must be in writing and submitted to the other party within thirty (30) calendar days following the final decision issued pursuant to Article 13. The timeliness of a notice will be determined as follows:

1. Regular/Certified Mail – Notice sent by regular or certified mail must be postmarked by the thirtieth (30th) day after the final decision on the grievance is issued.
2. Electronic Mail – Notice sent by electronic mail (e-mail) must be sent by midnight (EST) on the thirtieth (30th) day after the final decision on the grievance is issued.

The party invoking arbitration will provide to the other party a list of proposed witnesses that the party anticipates calling at the arbitration hearing in the notice described above. The purpose of this list is to assist with determining witnesses' availability for potential hearing dates. The party will provide a final witness list in accordance with Section 8 of this Article.

## SECTION 3

### Selecting Arbitrators for Hearing

Arbitrators will be selected in alphabetical order on a rotating basis to hear arbitration cases. If the arbitrator scheduled to hear an arbitration dispute is not available for an arbitration hearing within a

reasonable period of time or does not have any dates that are mutually agreeable between the Parties, then the next arbitrator on the list may be used.

#### SECTION 4

##### Arbitration Hearing

**Scheduling the Hearing** – The party invoking arbitration shall bear the initial burden to pursue the issue to arbitration. That party shall be responsible for calling the arbitrator, obtaining a list of available hearing dates and providing those dates to the other party. After selection of the arbitrator in a particular case, the Parties will schedule the hearing date. The Parties should cooperate and communicate in order to schedule the arbitration hearing and to ensure that the time frames established in this Article are followed to the maximum extent practicable.

**Hearing Location** – Arbitration hearings will be held on the premises of the New York Immigration Court, or at any site mutually agreed to by the Parties.

#### SECTION 5

##### Arbitrability

**Notification** – A Party raising the issue of arbitrability of a grievance must notify the other Party not less than ten (10) days before the arbitration hearing. At the hearing, the Parties will inform the arbitrator that there is an arbitrability issue and that issue will be presented first.

**Separate Arbitrability Hearing** – A party raising the issue of arbitrability of a grievance may require that a separate hearing be held to decide the arbitrability issue.

#### SECTION 6

##### Statement of Issue

Not later than ten (10) days before the arbitration hearing, the Parties shall communicate in an attempt to agree on a joint submission of the issue(s) for arbitration. If the Parties fail to agree on a joint submission, each Party will prepare a statement of what it believes the issue(s) to be and the arbitrator will determine the issue(s) to be decided.

## SECTION 7

### Document Exchange

No later than ten (10) days before the hearing, the Parties shall exchange documents intended to be entered into evidence at the arbitration hearing. If a document is not provided to the other Party, it may not be entered into evidence at the arbitration hearing absent a showing of good cause as to why the document was not previously provided to the other Party. The arbitrator shall determine if good cause exists.

## SECTION 8

### Witnesses

The Parties will exchange a list of witnesses no later than ten (10) days before the hearing. If there is a dispute as to whether a proposed witness is relevant or reasonably available, the arbitrator shall decide the matter. Agency employees that are scheduled to testify at the arbitration hearing will be made available for the hearing and remain in official pay status. Union representatives and technical advisors will be released in accordance with Article 11, Official Time. If a witness is not able to be present in person at the arbitration hearing, telephonic testimony will be allowed.

## SECTION 9

### Authority of the Arbitrator

The Employer and the Union agree that the jurisdiction and authority of the arbitrator will be confined exclusively to the issue as mutually agreed upon by the Parties. If the Parties are unable to mutually agree upon the issue, the authority of the arbitrator will be confined to the issue as determined by the arbitrator. The Parties recognize that the arbitrator may interpret this agreement but has no power to add to, subtract from, or modify the language of this agreement.

Post-Hearing Briefs – Either Party or both may submit a post-hearing brief. The arbitrator will determine the date the briefs will be due.

## SECTION 10

### Arbitrator's Decision

The arbitrator will be requested to render his or her decision within thirty (30) days following the conclusion of the hearing or the submission of post-hearing briefs whichever is later. The arbitrator will submit all findings in writing.



Decision on the Record – When the Parties mutually agree to the facts at issue or that a matter is appropriate for a decision without a hearing, the Parties will jointly request that the arbitrator issue a decision on the written record. The Parties shall jointly submit data and other documentation to the arbitrator. Both Parties may submit a written argument to the arbitrator.

## SECTION 11

### Transcripts

Verbatim transcripts may be requested by either Party. If either party desires a written transcript, they must notify the other party as soon as possible but no later than ten (10) days before the hearing. The party requesting a transcript shall be responsible for arranging for a stenographer and shall be responsible for the cost of the stenographer unless the other party agrees, in which case the costs will be shared equally. Any copies of the transcript will be borne by the Party requesting it.

## SECTION 12

### Arbitration Fees and Expenses

The cost of arbitration will be borne by the losing party. If there is a split decision, the cost will be borne equally by both parties. A split decision includes any decision where the arbitrator does not find completely in favor of one party or the other. In cases of procedural arbitrability, the decision shall be considered a split decision only if there is a separate arbitrability hearing. If there is no separate arbitrability hearing, the cost will be borne by the party who loses on the merits of the grievance unless the decision on the merits is a split decision.

If a grievance is resolved in favor of the grievant (the grievant is given full relief) prior to the arbitration date, but not within the arbitrator's cancellation time frame, the Employer will pay any expenses incurred. In the case of any other resolution prior to the arbitration date, the parties will split any arbitration costs.

Each Party will bear its own costs of the arbitration such as travel for witnesses except for those instances when both parties have decided to call the same person as a witness, in which case the Employer will pay any necessary travel costs.

## SECTION 13

### Time Frames

Any time frames set forth in this Article may be extended by mutual agreement.

**ARTICLE 15**  
**Equal Employment Opportunity**

Management and the Union agree that the principle of equal employment opportunity is important and that in accordance with applicable laws, regulations and DOJ orders no discrimination shall be tolerated on the basis of race, color, age, religion, national origin, disability, sex or sexual orientation in any matter relating to employment.

**ARTICLE 16**  
**Hours of Work**

**SECTION 1**

**General**

Both Parties recognize that the use of Alternative Work Schedules (AWS) can improve productivity and morale and provide greater service to the public. The use of AWS is authorized in accordance with governing laws, rules, regulations and this Article. AWS includes the following:

Compressed Work Schedule (CWS-5/4/9) and Flexible Work Schedule.

**SECTION 2**

**Implementation**

The Parties agree that under CWS, an employee works five days one week and four the next with a Friday or Monday off. Each work day will be nine and one-half hours long including an uncompensated half hour for lunch, except for one Friday or one Monday which will be eight and one-half hours long (5/4/9 schedule).

The Parties agree that under a Flexible Work Schedule, an employee works ten days over a two week period. Each work day will be eight and one-half hours long including an uncompensated half hour for lunch.

Employees opting to work a CWS schedule as noted above will submit a request in writing to the Deputy Court Administrator. The request shall state the employee's desired work schedule, including their starting and ending hours. Within fifteen (15) days after receipt of his/her request, the employee will receive written notice as to whether the request has been approved or disapproved. If an employee's request for CWS is disapproved, an explanation will be provided in the written notice. Approved requests will be implemented the first full bi-weekly pay period after approval. Minor problems with CWS requests (e.g., scheduling conflicts) should be resolved informally between the

supervisor and the affected employee(s). New employees may submit their written requests for CWS upon entrance on duty. If an employee wishes to change his/her schedule, they must submit a written request to the Deputy Court Administrator.

The Parties recognize that there are unique coordination issues related to implementing CWS in the New York Immigration Court and that an employee's CWS schedule must be coordinated to ensure that the efficiency of court operations are not interrupted. If an employee serves as a clerk for an Immigration Judge, the employee's CWS off-day will generally be the same as that of the Immigration Judge. If an employee does not serve as a clerk for an Immigration Judge, the employee's off-day will be dependent on the staffing needs of the Immigration Court.

Participation in the CWS option will be voluntary for full time bargaining unit employees. Every effort will be made to comply with an employee's selection of a CWS schedule subject to the scheduling needs of the Immigration Court. Employees will not be discriminated against or otherwise adversely affected by their selection of any CWS option.

### SECTION 3

#### Work Hours

An employee may elect to work between the hours of 7:00 a.m. and 6:00 p.m. subject to approval by the Employer.

### SECTION 4

#### Miscellaneous

Employees who become ill during their off-day will not be entitled to an alternative day off. If an employee's Friday off-day falls on a Federal holiday, the employee will be given the Thursday before that holiday as their day off. If an employee's Monday off-day falls on a Federal holiday, the employee will be given the Friday before that holiday as their day off. Employees who voluntarily come into work on their off-day are not entitled to an alternative day off.

Supervisors may temporarily change an employee's CWS schedule to a basic eight (8) hour per day schedule when required to do so for such purposes as official travel or training, or other operational requirements. The employee may revert to his/her previous CWS schedule at the beginning of the following pay period.

An employee who elects to participate in CWS must participate for a minimum of nine (9) pay periods before the employee can opt-out of CWS. An employee may request to change his/her work hours at any time.

Employees who exhibit performance, attendance or conduct problems related to CWS may be taken off of it at the discretion of management. Employees working an CWS schedule who are being disciplined for misconduct will be placed on a normal eight (8) hour workday during the pay period while serving a suspension.

The Employer will consider changes in individual schedules or assignments to permanent shifts requested by employees because of hardships or other reasons.

## SECTION 5

### Adverse Impact Determination

If the Employer determines that the CWS schedule is having an adverse agency impact, the Employer shall take action to terminate CWS in accordance with applicable laws and regulations.

## **ARTICLE 17**

### **Arriving/Departing Work**

All employees are required to arrive and depart on time. Therefore, employees are also required to be ready to work during their assigned shifts. In order for the employer to keep track of employees in the office for security purposes, all employees are required to check in/out with their supervisor immediately upon arrival and departure, including lunch breaks. Employees may use the telephone or e-mail for this purpose. By itself, this procedure will not be used to determine if bargaining unit employees are reporting to work late. In the supervisor's absence, the employee should contact his/her designee.

## **ARTICLE 18**

### **Tardiness**

The parties recognize that employees must be at work on time and that management has the right to discipline employees for tardiness. Employees who arrive late for work must submit a leave slip to their supervisor by the end of the business day. Employees who do not submit a leave slip by the end of the business day will be charged AWOL for the period of absence.

## **ARTICLE 19**

### **Lunch Period**

Bargaining Unit employees are entitled to a half hour unpaid lunch period each day. A bargaining unit employee who is required to work through a lunch period and is not permitted by his/her supervisor to take a later lunch period, will be paid overtime or granted compensatory time to the extent required by

applicable laws and regulations if working through lunch results in the employee working over eight hours that day.

## **ARTICLE 20**

### **Absence and Leave**

In matters relating to the administration of absence and leave, the Parties and bargaining unit employees will be governed by applicable federal laws, DOJ Order 1630.1B approved July 22, 1991 and the following procedures in this Article.

An employee must request leave in advance from his or her immediate supervisor. If leave is not approved, the employee is expected to be working throughout the entire scheduled tour of duty. The following procedures must be followed when requesting leave.

#### **SECTION 1**

##### **Annual Leave**

Annual leave, except in the case of an emergency, is to be requested as far in advance as possible, but not less than 10 days in advance, on a Form 71. The need to ensure that the Court and each of its components continue to function smoothly and effectively is the principal consideration in approving or disapproving a request for leave. A decision to grant or deny the leave will be made as soon as possible, but no more than five (5) work days of receipt of the annual leave request.

Whenever an employee requests annual leave with less than ten (10) days notice, the employee must submit Form 71 to the approving supervisor with as much advance notice as possible. The leave-approving supervisor will render a decision as soon as practical.

Conflicting annual leave requests and changes to planned leave, which cannot be resolved, will be resolved on the basis of date of submission, and then on seniority, as defined in Article 48. When sickness occurs during a period of annual leave, the employee may request annual leave be substituted by sick leave for the duration of the illness. When annual leave is scheduled in advance, management will not cancel that leave, except for an exigency of the public business.

Employees will not be called at home when on approved annual leave or sick leave except as outlined in section 6 below and in emergency situations.

## SECTION 2

### Emergency Leave

If the employee is unable to report to work on time or at all due to a personal emergency or illness, the employee must request the appropriate leave from his/her supervisor or designee. This request must be made as soon as possible, but not later than the beginning of his/her regularly scheduled tour of duty. In the event that the employee cannot personally notify his/her supervisor or their designee, the employee may leave a request for leave on the supervisor's voice mail. Extenuating circumstances of a highly unusual nature may prevent timely notification. Such circumstances will be carefully considered when management evaluates leave requests. If the personal emergency or illness continues for more than one day, the employee must personally request leave from his/her supervisor for each day that the personal emergency or illness continues, unless the employee's supervisor has approved other arrangements. Until such notification is given, the employee's supervisor cannot grant leave and will consider the employee as Absent Without Leave (AWOL). Once proper notification is given and the employee's request for leave is granted, the employee's leave may be converted to the appropriate leave category. AWOL may subject an employee to disciplinary action. In some instances, the employee's supervisor may require certain documentation before approving a request for emergency or illness leave.

If an Employee needs to leave work during their tour of duty due to illness or emergency, the employee should personally notify his or her supervisor or their designee. If the employee is unable to personally notify his/her supervisor or their designee, the employee may notify the supervisor or designee by email or voice mail. If the notification is done by email, the employee shall copy the Court Administrator or the Deputy Court Administrator.

## SECTION 3

### Sick Leave

Requests for sick leave for non-emergency medical, dental, or optical examination or treatment should be submitted as far in advance as possible on a Form 71. If the supervisor is unable to approve the leave for any reason, the supervisor will work with the employee to schedule the leave at a time that is mutually agreeable. When requesting unscheduled sick leave, the employee should use the notification procedures discussed in section 2 above.

When returning to duty from an absence of more than three (3) consecutive workdays due to illness, the employee may be required to furnish a medical certificate signed by his/her physician. The medical documentation must include the dates of illness and clearly state that the employee was incapacitated for duty. If a physician or practitioner was not consulted, a signed Form 71 from the employee giving the facts about the absence, the treatment used and reasons for not having a physician may be accepted as supporting evidence by the Employer.

When an employee is returning to duty from an illness related absence of three (3) consecutive workdays or less, and a physician or practitioner was not consulted, a signed Form 71 from the employee giving the facts about the absence, the treatment used and reasons for not having a physician may be accepted as supporting evidence by the Employer, unless the employee is on a leave restriction.

An employee may use sick leave when he/she is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth; receives medical, dental or optical examination or other treatment for such conditions; to replace or repair prosthetic devices and or train in the use of such aids including seeing eye dogs; or would jeopardize others by his or her presence on the job because of exposure to a communicable or contagious disease.

#### SECTION 4

##### Leave Restriction

Should an employee show leave abuse, a letter placing the employee on leave restriction may be issued. An employee can be removed from leave restriction at any time if the Employer determines that it is no longer necessary. The employee's leave usage will be reviewed at least every six (6) months. After review, the Employer will notify the employee in writing of its decision to either terminate the leave restriction requirements or continue them and provide reasons for that decision.

Note: Being placed on leave restriction is not a disciplinary action. Rather, it is used to assist employees who are frequently out on unscheduled leave with improving their attendance and following leave procedures. In determining whether to put an employee on leave restriction, the Employer will take into consideration any special circumstances, such as illness, etc., that requires an employee to take leave.

#### SECTION 5

##### Tardiness

On occasion, conditions may develop during non-working hours which would make it difficult and/or hazardous for an employee to arrive at work on time but would not cause the office to close. In those cases, based on supervisory judgment, employees may be excused for tardiness for up to one (1) hour. However, employees are expected to make every reasonable effort to arrive at work on time.

## SECTION 6

### Special Circumstances

Delayed Arrival/Unscheduled Leave: When an emergency condition occurs before the workday begins, a delayed arrival policy may be announced in conjunction with an unscheduled leave policy. In this situation, non-emergency employees should follow the delayed arrival home departure and unscheduled leave policies.

Tardiness: Tardiness beyond an employee's actual arrival time at the work site when a delayed arrival is announced may be excused at the discretion of the Employer if the employee made a reasonably diligent effort to get to work on time. In determining the amount of additional excused absence to grant employees, the Employer should consider such factors as distance, availability and mode of transportation, and the success of other employees in similar situations in reaching the workplace.

Closure: Prior to commencement of a workday, the Employer will notify each employee by phone, a major broadcasting network, or other appropriate communication media if the office is closed. If the Employer determines to close all or part of the office for a short period due to unplanned events beyond the control of management or employees which interrupt normal operations, administrative leave may be granted unless other alternatives are available. During the workday, employees will be notified if the Employer decides to close all or part of the office for a short period due to unplanned events beyond the control of management or employees which interrupt normal operations. Administrative leave may be granted to employees unless other alternatives are available. If an employee is granted annual leave to depart work early due to inclement weather, and the office is subsequently closed for early dismissal, the employee will be charged annual leave until the time of early dismissal.

Emergencies: If the office is closed due to an emergency, employees affected by the closure will be excused without loss of pay and without charge to leave. This section does not apply to employees who have been furloughed.

Volunteers: Employees who participate in management-sponsored community volunteer services may be granted excused absence to participate in such activities. Volunteers for other organizations must request leave, as noted above, if such service requires their absence. Employees, who participate in emergency situations other than National Guard/Reservists, may be granted excused absence. Employees should inform the Employer of their outside emergency/volunteer activities relative to the above. If the excused absence is granted, the employee will submit documentation of services to the supervisor upon their return to duty.



## SECTION 7

### Advanced Leave

Advanced leave is not an employee's right or entitlement. Requests for advanced leave must be submitted to management and in accordance with applicable regulations.

## SECTION 8

### Family and Medical Leave Act (FMLA)

Under certain conditions, an employee may be entitled to unpaid leave as detailed in current regulations. If an employee is interested in taking FMLA leave, he or she must submit a request to his or her supervisor. If the employee is unsure how to request leave under this act, the employee may contact Human Resources Office for guidance.

## SECTION 9

### Leave Without Pay (LWOP)

Leave Without Pay is not an employee's right or entitlement. Therefore, each application for LWOP will be closely examined by management to determine whether the value to the Government or the needs of the employee are sufficient to offset the costs involved and the administrative inconvenience in approving LWOP. Extended LWOP may be approved for such purposes as education which would be beneficial to the Employer; recovery from illness or disability; or protection of employee status and benefits pending action by the Office of Worker's Compensation Programs (OWCP) on a claim resulting from a work-related illness/injury or during the period pending an initial decision by the Office of Personnel Management (OPM) on a disability retirement action. LWOP may be requested whether or not the employee has a positive annual and/or sick leave balance.

## SECTION 10

### Absence Without Leave (AWOL)

AWOL is absence from duty that the employee's supervisor has not authorized or approved (including leave which is not approved until required supporting evidence or documentation is submitted) or for which a leave request has been denied. Recording an absence of AWOL is not a disciplinary action, however, AWOL can become the basis for initiating disciplinary action. Some instances for which an employee may be charged AWOL include returning late from lunch, arriving late to work, and leaving work early and not submitting a leave slip at the end of the day in which the employee returns to work from unscheduled leave. Pay is forfeited for all absences reported as AWOL.

**ARTICLE 21**  
**Overtime**

**SECTION 1**

Those hours worked in excess of eight (8) hours per day or forty (40) hours per week will be compensated and administered in accordance with law, rule, and regulation. Overtime will not be approved, except on a case by case basis in writing, in advance, by the Chief Immigration Judge, or his/her designee. In cases where an Immigration Judge requires an employee to work beyond the end of his/her normal work day, the employee will notify the Court Administrator or Deputy Court Administrator the next business day. That employee will then be paid overtime or granted compensatory time to the extent required by applicable laws and regulations.

**SECTION 2**

In cases where employees are required to work overtime outside the courtroom, selection for overtime work will be made on a voluntary, rotating basis among those employees determined by management to be the best qualified to perform the work. When insufficient volunteers are available, reverse seniority entry-on-duty (EOD) will be used to select among those employees determined by management to be the best qualified to perform the work. (See article 48, Seniority).

**SECTION 3**

Employees working other than their regular assignment or attending training locally will be considered for overtime opportunities as if they were working their regular assignment.

**SECTION 4**

A pattern of using leave during times when overtime is being assigned may be reason to deny future overtime opportunities. This does not include leave that was approved prior to the announcement of the availability of overtime.

**ARTICLE 22**  
**Disciplinary and Adverse Actions**

**SECTION 1 Definitions**

Disciplinary action for the purpose of this Article is defined as a formal written reprimand or a suspension from employment for fourteen (14) calendar days or less.

Adverse action for the purpose of this article is defined as a reduction in grade, removal, or suspension for more than fourteen (14) days or a furlough without pay for thirty (30) days or less.

The Parties agree that under the concept of progressive discipline, discipline and adverse actions are used to correct employee misconduct rather than as a form of punishment. The effective use of progressive discipline requires timely application of sanctions to deal with employee misconduct. However, the Parties recognize that circumstances may arise where the concept of progressive discipline may not be appropriate or where the timely application of any discipline or adverse action may not be possible and that the decision and timing of any discipline or adverse action rests with the Employer. In all cases, the Employer will afford the employee all procedural and other rights to which the employee is legally entitled.

## SECTION 2 Representation

A bargaining unit employee is entitled to self-representation, or Union representation when responding to a notice of proposed disciplinary or adverse action. When an employee chooses to be represented by the Union, the employee will provide the Employer with written notice of such designation. Upon receipt of such designation, the Employer will coordinate any meetings with the Union representative.

## SECTION 3 Procedures

### Discipline

The Employer will provide the employee with at least ten (10) days advance notice of intent to impose discipline. The notice will state the reasons for the proposed action, with sufficient detail to enable the employee to understand the reasons that the action is being proposed. The employee may respond orally and/or in writing within ten (10) days from receipt of the notice, and may furnish affidavits and other documentary evidence in support of their response. The employee may be granted an extension of the reply period, at the discretion of the deciding official, provided that the employee provides demonstrated and valid reasons requiring such an extension. After receipt of the written and/or oral response, or the termination of the notice period, whichever comes first, the Employer will issue a written decision to the employee which will include a statement of the employee's appeal rights. An employee against whom a disciplinary action is taken under this Article may appeal the decision through the Agency EEO process or under the negotiated grievance procedure of this Agreement, but not both.

### Adverse Actions

The Employer will provide the employee with at least thirty (30) days advance written notice of an adverse action. The notice will state the reasons for the proposed actions, with sufficient detail to enable the employee to understand the reasons the action is being proposed. The employee may respond orally and/or in writing within ten (10) days from receipt of the notice, and may furnish

affidavits and other documentary evidence in support of their response. The employee may be granted an extension of the reply period, at the discretion of the deciding official, provided that the employee provides demonstrated and valid reasons requiring such an extension. After receipt of the written and/or oral response, or the termination of the notice period, whichever comes first, the Employer will issue a written decision to the employee which will include a statement of the employee's appeal rights.

An employee against whom an adverse action is taken under this Article is entitled to appeal through statutory procedures or the negotiated grievance procedure of this Agreement, but not both.

Employees will remain in a pay status during the notice period unless the crime provision is invoked.

**CRIME PROVISION:** The above-referenced notice periods do not apply if the crime provision is invoked pursuant to 5 USC § 7513(b)(1).

#### SECTION 4

##### Administrative Time

Employees are entitled to a reasonable amount of time to prepare a response to proposed discipline or adverse action. Arrangements for use of administrative time must be coordinated with, and approved by, the employee's supervisor and is subject to work needs of the court.

#### SECTION 5

##### Evidence

Any evidence relied upon to support the proposed discipline or adverse action will be provided to the employee with the notice of the proposed action. A copy of the notice of proposed action entitled "For the Union" will be provided to the employee.

### **ARTICLE 23 Employee Health and Fitness**

The Employer agrees that the well-being of bargaining unit employees at the workplace is of mutual interest to the Parties. Accordingly, the Employer is committed to providing a healthy, quality work environment for those employees.

Information on health and fitness is available to employees through the agency's Employee Assistance Program and other agency resources.

**ARTICLE 24**  
**Safety and Health**

**SECTION 1**

**Importance**

Recognizing that employee safety is of paramount importance in the workplace, management may take immediately whatever action is necessary to minimize the risk of physical danger to employees of the New York Immigration Court. Management agrees to solicit the Union's views on safety matters prior to making any safety-related changes, if practicable.

**SECTION 2**

**Inspections**

Any safety or health inspections conducted by General Services Administration (GSA) that are reduced to a written report will be provided to the Union, upon their request.

**SECTION 3**

**Compliance With Safety and Health Procedures**

For the safety and health of all New York Immigration Court personnel, bargaining unit members shall timely and fully comply with all safety and health procedures implemented in the New York Immigration Court.

**SECTION 4**

**Fire Wardens and Monitors**

The parties recognize that management retains the right to assign fire wardens and monitors. Fire wardens and monitors will be rotated bi-annually. Fire wardens and monitors will be provided their duties in writing.

**ARTICLE 25**  
**Workplace Accidents, Injury and Illness**

**SECTION 1**

**Reporting and Investigation of On-The-Job Accidents and Injuries**

Both Parties agree to encourage all employees to report all accidents and injuries immediately, as required by applicable laws, guidelines, standards, rules, and regulations.

The Employer will comply with applicable laws, guidelines, standards, rules, and regulations concerning the reporting of accidents and injuries.

Employees should report all on-the-job injuries, regardless of their severity, as soon as possible after becoming aware of the injury. The injury should be reported to the immediate supervisor or designee.

The Employee will complete all accident/illness/injury reports and investigations, and provide the completed forms to the Human Resources Office. The Employer will promptly assist employees in completing required written reports in connection with job-related injuries or illnesses. Upon request, the Union will be given a sanitized copy of all accident/illness/injury reports and investigations.

In the case of serious on-the-job illness, injury, or death of an Employee, Management will attempt to notify the employee's next of kin and/or assist the employee in obtaining emergency medical treatment.

The employer agrees, as soon as practicable, to notify the Union of the on-the-job illness, injury, or death of a bargaining unit employee. Consistent with the Privacy Act and other applicable laws and regulations, the Employer will provide the Union a copy of the completed forms, upon request.

The Union may accompany the Employer when any investigation is made of an occupational accident/injury/illness.

**SECTION 2**

**Federal Worker's Compensation**

Within a reasonable period after the Employer is notified of an employee's on-the-job injury or illness, the Employer will inform the employee that he or she should complete a CA-1 or CA-2 form, as appropriate, and where to gain access to them.

Should the employee have questions about their rights under the Federal Employees' Compensation Act or how to complete the form, they may call the Human Resources Office.

Employees who are temporarily unable to perform their regularly assigned duties because of illness or injury but who are capable of returning to a duty status may, for a reasonable period of time, be assigned to duties that they are qualified to perform and that are compatible with their physical condition, in accordance with medical documentation.

## **ARTICLE 26**

### **Facilities**

Dismissals due to unusual employment or work conditions created by a temporary disruption of air cooling or heating systems should be rare. Employees are expected to work if conditions in the workplace are reasonably adequate even though those conditions are not normal and may involve minor discomfort.

Individual employees will notify their supervisors if they require a change in their work area due to unusual levels of temperature. If the Employer is unable to provide an alternate work area and the Employer determines that the problem cannot be corrected before the end of the employee's workday, the Employer may grant administrative leave, sick leave, annual leave or a combination thereof.

## **ARTICLE 27**

### **Employee Assistance Program**

#### **SECTION 1**

The Employee Assistance Program (EAP) is a confidential program designed to promote the well-being of employees and their family members through counseling and referral by assisting those employees whose personal problems may serve as barriers to satisfactory job performance.

#### **SECTION 2**

The Employer will administer the EAP in accordance with United States Department of Justice directives.

#### **SECTION 3**

When appropriate, the Employer will inform employees of the EAP program.

#### **SECTION 4**

The Parties acknowledge that information on the EAP program is available on the Intranet.

**ARTICLE 28**  
**Substance Abuse**

**SECTION 1**

Employees with substance abuse or alcohol problems who voluntarily request assistance and participate in a prescribed program of treatment will not be disciplined only for participation in the program. The Parties encourage all employees, who suspect they may have a substance abuse problem to voluntarily seek counseling and information as early as possible.

**SECTION 2**

No employee will have job security or promotion action jeopardized by a request for counseling or referral assistance.

**SECTION 3**

The Parties recognize that all confidential information and records concerning employee counseling and treatment will be in accordance with applicable laws, rules and government regulations.

**SECTION 4**

Administrative leave is authorized for employees attending counseling sessions with an EAP counselor. Employees who are referred for treatment in other rehabilitation programs should generally attend such programs outside of normal working hours. If such treatment is unavailable during non-working hours, employees may use sick leave, annual leave, or leave without pay to attend the programs subject to supervisory approval.

**ARTICLE 29**  
**Smoking Policy**

**SECTION 1**

Recognizing that smoking is a risk to their health and well-being, the Parties mutually support and encourage all efforts by the employees to quit smoking. Subject to operational needs and funding, the Employer will sponsor employee participation in smoking cessation classes, clinics, or other such activities. Recognizing it is the individual choice of each employee as to whether he or she will smoke, participation in a smoking cessation program will be voluntary.



## SECTION 2

Executive Order 13058, Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace, was implemented in 1997 to establish a smoke-free environment for Federal employees and members of the public visiting or using Federal facilities. The smoking of tobacco products is prohibited in all interior space owned, rented, or leased by the Executive branch of the Federal government. Employees may use tobacco products outside the building during non-duty hours.

### **ARTICLE 30** **Position Classification and Description**

#### SECTION 1

##### General

The Parties agree to the principle of equal pay for substantially equal work within the bargaining unit. The Employer agrees to maintain job descriptions, which accurately reflect the major duties and responsibilities assigned to bargaining unit members on a regular and recurring basis.

#### SECTION 2

##### Position Descriptions

Job descriptions of employees who are performing identical duties, at the same level of responsibility, with the same degree of supervision under the same supervisor, and with all other evaluation factors identical will, to the extent practical, be uniform. Employees will receive a copy of their job description upon appointment, position change, or a change in the job description within thirty (30) calendar days. Employees are responsible for retaining a copy of their current job description.

#### SECTION 3

##### Audits/Classification Appeals

If a bargaining unit employee believes that they are performing duties that are not covered by their position description, the employee should discuss the matter with their supervisor. A bargaining unit employee may request a position audit or pursue a classification appeal at any time. An employee cannot refuse to perform task which are assigned to them by the supervisor.

## SECTION 4

### Surveys

The Employer agrees to notify the Union when there are going to be any surveys or job audits affecting employees in the unit. When requested by the Union, the Employer agrees to discuss with the Union, survey procedure, sampling techniques, and survey schedules.

## **ARTICLE 31 Merit Promotion**

The Merit Promotion Program will be administered in accordance with the EOIR policy dated November 19, 1998 (see Appendix 2). Any changes to existing policy will be negotiated in accordance with 5 U.S.C. Chapter 71.

## **ARTICLE 32 Details**

### SECTION 1

#### Temporary Promotions

Employees detailed to a higher-graded position, for which they meet Office of Personnel Management (OPM) qualification standards, for a period of more than thirty (30) days, must be temporarily promoted. The employee will be paid for the temporary promotion at the beginning of the next pay period after the receipt of a personnel action (SF-52) in the Human Resources Office. The temporary promotion will be initiated at the earliest date it is known by management that the detail is expected to exceed thirty (30) workdays. Adjustments will be made to the employee's workload when required to perform details to a higher-graded work.

### SECTION 2

#### Selection

Selection for details with known promotion potential or to higher-graded positions will be made by seniority from amongst those employees that management has deemed equally qualified and capable of successful performance in the detailed position. These details will be documented appropriately.

## SECTION 3

### Informal Details

Informal details are those which do not exceed thirty (30) calendar days. The employee will be informed of the duties of the detail. The Employee may complete an SF-172 for his or her OPF, should the Employee want to document a detail of thirty (30) days or less.

### **ARTICLE 33**

#### **Performance Appraisal/Performance Improvement Plans**

The Performance Appraisal Program and performance improvement plans will be administered in accordance with the EOIR policy dated November 12, 2004 (see Appendix 3). Any changes to existing policy will be negotiated in accordance with 5 U.S.C. Chapter 71.

### **ARTICLE 34**

#### **Awards**

Awards will be issued in accordance with EOIR policy, dated September 2003, a copy of which is attached at Appendix 4. Any changes to existing policy will be negotiated in accordance with 5 U.S.C. Chapter 71.

### **ARTICLE 35**

#### **Travel/Temporary Duty (TDY)**

## SECTION 1

Employees will be informed of the opportunity or the requirement to perform temporary duty as much in advance as practical. The employees' work schedule will be changed accordingly to accommodate travel/temporary duty (TDY). When the Employer requires TDY and is unable to provide normal notice, the employee and supervisor will make reasonable efforts to accommodate special needs of the employee due to the short notice. Employees will not be expected to travel without valid travel orders. The Employer agrees to consider financial hardship and other factors when assigning TDY when more than one (1) employee is available for such assignment. The declaration of hardship by an employee will not cast any reflection on the employee's standing with the Employer or on their loyalty and desirability to the organization.

## SECTION 2

To the greatest extent practicable, travel will be accomplished during normal business hours. When travel is scheduled outside of business hours, overtime/compensatory time will be provided in accordance with applicable laws and regulations.

### SECTION 3

Employees will be entitled to benefits provided by the Federal Travel Regulations (FTR) or any governing regulation. Employees will not be required to use their privately owned vehicles for travel. When an employee is approved to use their privately owned vehicle for TDY travel, reimbursement will be in accordance with the FTR.

### SECTION 4

When there is a choice to the mode of transportation or accommodations, the supervisor will consider the employee's desires. Rental cars will be authorized to employees when warranted and authorized under law.

## **ARTICLE 36 Training and Employee Development**

### SECTION 1

The Parties recognize the value of career development for all employees and encourage bargaining unit employees to pursue career development. The Parties acknowledge that information related to career development is available on the Intranet/Internet and through the Human Resources Office.

Subject to operational needs and funding, employees will be given the opportunity to pursue career development activities.

### SECTION 2

The Employer recognizes the job-related training for employees is important especially training designed to improve the technical competence of Agency employees. The Employer will plan and provide for the training and development of employees as required to accomplish the Agency's mission. This may involve different types of training such as refresher, technical, and specialized training. Employees are expected to share with fellow employees new skills and techniques acquired through such training.

Also, the Employer recognizes that there may be a need for bargaining unit employees to attend seminars or accredited courses for career development not provided by the Employer. Employees will not be required to share new skills and techniques acquired through such training.

The above training will be provided without undue disruption to the Agency's mission.

**ARTICLE 37**  
**Reduction in Force**

**SECTION 1**

**Purpose**

This article is intended to establish and describe procedures the Employer will take in the event of a reduction-in-force (RIF), reorganization, or a transfer of function, as defined in the applicable regulations. It is also intended to protect the interests of employees while allowing the Employer to exercise its rights and duties in carrying out the mission of the Employer.

**SECTION 2**

**Application**

The Employer agrees that the application of laws and regulations relating to any matter in this Agreement will be fair and equitable. Where the Employer is left discretion in choosing a course of action in any matter covered in this Agreement, the Union will be notified of the course of action and given the opportunity to discuss it.

**SECTION 3**

When a decision has been made to take a reduction in force action, the Employer will keep the Union and the affected employees informed. The Employer agrees to notify the Union of the reasons, number and types of positions affected, approximate effective date of the action, and to provide an opportunity for the Union to present its views and ideas.

**SECTION 4**

An employee affected by a RIF action and/or their representative(s), designated in writing, may examine the retention registers and other pertinent information for that competitive area relative to the action after offers of position or separation notices are received.

**SECTION 5**

All RIF actions will be carried out in strict compliance with laws and regulations, and relevant programs such as Career Transition Assistance Program and Inter Employer Career Transition Assistance Program (CTAP/ICTAP).

## SECTION 6

Written notification to the Union of any RIF and/or transfer of function will be made at the earliest possible date prior to general notices to employees. The notification will include:

- (1) The reason for the action to be taken;
- (2) The approximate number of employees who may be affected initially;
- (3) The types of positions anticipated to be affected initially; and,
- (4) Anticipated effective date that action will be taken.

The Employer will provide the Union with documentation requested by the Union in writing. The information provided would be that governed under 7114(b)(4) of the statute.

## SECTION 7

### Notice to Employees

The Employer will give an advance general notice, not more than ninety (90) days before the effective date of the action, to employees who may be affected by a RIF action.

The Employer will provide a specific notice of sixty (60) days before the effective date of the action to individual employees who will be affected by a RIF action.

## SECTION 8

### Competitive Areas

Management will establish competitive areas in accordance with governing regulations. Notification to the Union of the competitive areas will be made at the earliest possible date. The Employer will temporarily suspend the filling of all bargaining unit vacancies in the competitive area of employees who will be affected by a reduction in force not more than sixty (60) days prior to issuing specific RIF notices.

## SECTION 9

### Filling Positions

- A. The Employer will use vacancies to the maximum extent possible to place employees who would otherwise be separated in a reduction in force. RIF-affected employees will be given first consideration for reassignment to vacant positions for which they qualify in their competitive area.
- B. The Employer will establish a re-employment priority list of employees separated because of the RIF. Employees on this list will be offered positions in the competitive area, for which they qualify, at or below the grade from which separated, prior to the Employer seeking applicants from outside of the Employer.
- C. The Employer will take all reasonable steps to make lateral reassignments to vacant positions and to waive non-mandatory qualifications to the maximum extent feasible to facilitate the placement of affected employees at the same or lower grade.

## SECTION 10

- A. Bargaining unit employees if downgraded through no fault of their own, are entitled to pay and grade retention in accordance with 5 C.F.R., Part 536.
- B. Employees affected by RIF, and eligible for relocation entitlements, will be allowed all entitled benefits in accordance with applicable laws, rules and regulations.

## **ARTICLE 38 Contracting Out**

### SECTION 1

The Employer will comply with applicable laws, rules, regulations, and Office and Management Budget (OMB) Circulars concerning contracting out. The Union will be made aware by the Employer of information concerning any change in conditions of employment pursuant to the contracting out activity that affects bargaining unit employees.

### SECTION 2

The local Union President will be provided with requested information to which the Union is entitled under applicable laws, rules, regulations, and OMB circulars concerning contracting out.

## SECTION 3

Upon request, the Union will be provided the opportunity to be represented in meetings and on committees for which Union representation is permitted under applicable laws, rules, regulations, and OMB Circulars concerning contracting out.

### **ARTICLE 39 Office Conduct**

All employees are on notice that they must conduct themselves in a professional manner at all times in the workplace and can be expected to be treated in the same manner. For example, behavior such as disrespectful conduct, foul language, failure to follow a supervisor's direction, physical abuse, and verbal abuse will not be tolerated.

### **ARTICLE 40 General Housekeeping**

Individual Work Areas: Bargaining unit employees will keep their individual work areas orderly, clean and clear of empty boxes and excessive amounts of trash.

Common Work Areas: Bargaining unit employees will clean up after themselves in the common work areas. This includes not leaving behind office supplies, empty boxes, personal effects or trash.

Lunch Rooms: Bargaining unit employees using the lunch rooms will clean up after themselves, including wiping off countertops, tabletops, chairs and cleaning sinks. Spills in microwaves must be cleaned out as they occur. Items placed in refrigerators must be labeled with the employee's name. Management will maintain a list of individuals using the refrigerators, from which individuals will be selected to clean the refrigerators on a rotational basis once a week. Individuals using refrigerators are on their honor to ensure that their names are on the rotational list. Items in refrigerators that are not labeled with the employee's name may be thrown out on the regularly scheduled clean-up day.

### **ARTICLE 41 Office Attire**

Outside the courtroom, bargaining unit employees shall present themselves in a neat and clean appearance and dress in appropriate attire suitable to their job assignment. In court and at the window, male bargaining unit employees shall dress in shirt and tie, dress slacks and dress shoes; female bargaining unit employees shall dress in business attire of equivalent formality and modesty. Given the nature of their work, union employees must be prepared to go to court in appropriate attire at all times. Male interpreters shall wear blazers while in court.



**ARTICLE 42**  
**Computer Usage**

In accordance with EOIR and DOJ policies governing the use of computers and technology, employees may use computers for limited personal use. An employee's personal use of the Internet and e-mail services must not interfere with the mission of either EOIR or DOJ. Unlawful or inappropriate use of such technology is not permitted (e.g., accessing pornographic or sexually explicit oriented sites, engaging in Privacy Act or Hatch Act violations, or disclosing Limited Office Use, confidentially sensitive, classified, or FOIA exempt information while using such equipment).

**ARTICLE 43**  
**Telephone Usage**

In accordance with EOIR and DOJ policies governing the use of computers and technology, personal telephone calls other than emergencies are to be kept to a minimum. An employee's personal use of the telephone must not interfere with EOIR or DOJ missions. A cell phone or beeper may be kept on vibrate mode and used for emergency purposes only.

**ARTICLE 44**  
**Audio Devices**

Audio devices may be used in the office areas and filing rooms only to the extent that they do not disturb others. Employees may not wear headphones.

**ARTICLE 45**  
**Visitors**

Employees are not allowed visitors in non-public work areas without prior approval from their immediate supervisor. Union representatives having a need to visit will be granted permission subject to operational and security considerations. The Union will give advance notice to the Employer of such a visit, normally at least two days in advance.

**ARTICLE 46**  
**Transit Subsidies**

**SECTION 1**

**General Provisions**

In accordance with applicable law, the Employer has adopted a transit subsidy program. All bargaining unit employees may apply for a tax-free benefit equal to their commuting costs in the form of passes or vouchers purchased by the Employer with appropriated funds. The amount of the tax-free benefit shall

be subject to limitations established by the Internal Revenue Service, applicable law, and budgetary constraints.

## SECTION 2

### Certification of Eligibility

Certification of eligibility will be made on a form specified by the Employer and signed by the employee. Certification will be required at the beginning of each employee's participation in the program, and periodically at the Employer's discretion.

## SECTION 3

### Conditions for Termination

Employees who are approved to receive transit subsidy payments have an affirmative obligation to give prompt notice to the Employer should they no longer meet the requirements for participation in the program. Individuals whose commuting practices change are included in this requirement.

## SECTION 4

### Distribution

Transit subsidy payments will be available for pick-up by employees approved to receive them at sites and on dates designated by the Employer.

## SECTION 5

### Replacement of Lost Transit Subsidy Payments

Due to the negotiable nature of the transit subsidy payment, lost transit subsidy payments will not be replaced.

## SECTION 6

### Restrictions on Use

Transit subsidy payments issued under this article are not transferable and are to be used only for commuting to and from work not including parking. Giving, selling, trading, and transferring transit subsidy payments issued under this Article to other individuals is prohibited. Purchasing or otherwise acquiring transit subsidy payments issued under this Article from another individual is also prohibited, even if the other individual is eligible to receive the subsidy. Employees who cease to use mass transit

or who leave the Employer will return any unused portion of the subsidy. Failure to comply with these provisions will result in loss of eligibility to receive transit subsidies under this Article.

**ARTICLE 47**  
**Surveys**

The parties recognize that the Employer has the right to gather information directly from bargaining unit employees. To the extent possible, the Union will be given a copy of any survey in advance of its distribution to bargaining unit employees. Upon request, the Union will be provided with survey results relating to bargaining unit employees subject to any Privacy Act restrictions or restrictions of any other applicable laws.

**ARTICLE 48**  
**Seniority**

For the purpose of this agreement, seniority will be determined by the Entry-on-Duty date at the New York Immigration Court. If a tie occurs, it will be broken by the Service Computation Date.

**ARTICLE 49**  
**Mid-term Bargaining**

**SECTION 1**

**General**

It is agreed that personnel policies, practices and matters affecting conditions of employment not expressly contained in this Agreement, shall not be changed by the Employer without prior notice to, and if requested, negotiation with the Union unless the change is de minimis.. The provisions of this Article apply to substance bargaining, if appropriate, and/or impact and implementation bargaining.

**SECTION 2**

**Proposed Changes**

The Employer shall provide the Union President with written notice of any proposed changes described in Section 1. The Union must notify the Court Administrator, within five (5) days after receipt of this notice, of its intent to negotiate.

Within fifteen (15) days after receipt of the notice of proposed change, the Union must submit its proposal to the Court Administrator. Should the proposals be negotiable, the Parties shall meet at a mutually agreeable time and place. The Parties agree that every effort shall be made to reach

agreement as expeditiously as possible usually within thirty (30) days from the initial notice of the proposed changes.

Any written notice described in this section may be made by e-mail. Any deadlines may be extended upon mutual agreement of the Parties.

### SECTION 3

#### Inadvertent Implementation

If the Employer inadvertently implements a change that impacts employees without notifying the Union or without providing the opportunity to bargain, the Employer will cease the practice upon notification by the Union of its interest in bargaining on the matter unless the change is de minimis. The Union will then be provided with information and the opportunity to negotiate over the changes before implementation continues.

## **ARTICLE 50**

### **Duration**

### SECTION 1

This Agreement and any Memorandum of Understanding entered into by the Parties shall remain in full force and effect for three (3) years from the date of formal approval by the head of the Agency as provided by 5 USC §7114(C).

### SECTION 2

Either party may give written notice to the other not more than one hundred five (105) nor less than sixty (60) calendar days prior to the expiration date of this Agreement of that party's intent to renegotiate this Agreement.

### SECTION 3

If neither party serves notice that it wishes to renegotiate this Agreement, the Agreement will continue in effect for an additional one (1) year period, subject to the provisions of this Article.

# APPENDIX 1

## **Appendix 1**

### **Definitions**

**Days** - Days are calendar days, unless otherwise specified in this agreement.

**Deadline** - If a deadline falls on a weekend or holiday, the deadline will extend to the close of business the next work day.

## APPENDIX 2

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

MERIT PROMOTION PLAN

Approved:



Director, Personnel Staff  
Justice Management Division

11.19.98  
Date



3-3-06  
3-3-06



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**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

**MERIT PROMOTION PLAN**

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EOIR-06-01

**POLICY.** It is the policy of the Executive Office for Immigration Review (EOIR) to select the best-qualified candidates based on skills and qualifications in filling vacancies and to select, assign, and promote candidates solely on the basis of job-related criteria after fair and open competition, and without regard to race, color, religion, gender, age, national origin, nondisqualifying disabilities, partisan political affiliation, sexual orientation, or other non-merit grounds. The procedures outlined below apply to all competitive service positions. Staffing/placement actions for competitive service positions covered by these guidelines, will be made in accordance with the requirements of DOJ Merit Promotion Order; title 5, Code of Federal Regulations (5 CFR); title 5, United States Code (5 U.S.C.); Office of Personnel Management's (OPM) qualification standards, and applicable negotiated agreements. Negotiated agreements take precedent, where they conflict, until further negotiation of the specific article is addressed in the contract.

In the interest of effective management, delegation of selection authority is generally made to supervisory levels close to the position being filled. Whenever practical, it should be delegated directly to the supervisor responsible for the vacancy being filled.

**A. RESPONSIBILITIES.**

1. The Personnel Officer has the following responsibilities, any of which may be delegated to appropriate employees on the staff:

- a. ensuring that all actions to fill vacancies are consistent with the provisions of this plan;
- b. ensuring that all persons involved in the administration of this plan have the necessary technical competence and understanding of personnel techniques and regulations;
- c. advising and assisting the Offices of the EOIR on competitive procedures, qualifications, and general recruitment/placement actions;
- d. properly preparing and distributing announcements, actively recruiting and fairly considering minorities and persons with nondisqualifying disabilities in accordance with applicable affirmative action plans, rating/ranking, convening and advising rating panels, referring candidates to selecting officials, and informing applicants of the results of their applications;
- e. processing placement actions in conformity with this plan and maintaining proper administrative records;

f. making necessary information available to employees and the public, while ensuring that individuals' right to privacy are protected;

g. abiding by the rules set forth under the Department of Justice's Career Transition Assistance Plan (CTAP) and Reemployment Priority List (RPL), as well as the Office of Personnel Management's government-wide Interagency Career Transition Assistance Plan (ICTAP); and

h. ~~conducting an annual review of this plan and recommending changes as appropriate.~~

2. Managers, supervisors and selecting officials are responsible for:

a. abiding by the rules set forth under the CTAP, RPL, and ICTAP programs;

b. ensuring that minorities, women, and persons with nondisqualifying disabilities are fully considered for all positions, and that applicable affirmative action plans are followed;

c. assisting with the development of job-related rating and ranking criteria for positions under their supervision, i.e., the development of job analysis and crediting plans;

d. ensuring that subject matter experts, women, and minorities are made available to serve on ad hoc rating panels;

e. ensuring that no prohibited personnel practices, as defined under 5 U.S.C. Section 2302, are involved in any promotion action; that no personal favoritism or preselection is involved in any competitive appointment or promotion action; and that no promise or guarantee of selection or promotion is made prior to the proper referral of a promotion candidate list, selection from the best qualified list; or before administrative approval is given;

f. ensuring that the applications of employees under their supervision who are absent for legitimate reasons (e.g., on official travel, on detail, on leave, at training, in the military, serving in a public international organizations or on Intergovernmental Personnel Act assignments) and have indicated an interest in being considered for specific position vacancies are referred;

g. acting expeditiously, within the specified time frame, on promotion candidate lists that are referred by the Human Resources (HR) staff;

- h. preparing and submitting the complete package of documentation relating to the merit staffing action to the HR staff; and
- i. making themselves knowledgeable of the Merit System Principles before exercising their authority under this plan.

3. Employees are responsible for:

- a. familiarizing themselves with the provisions of this plan;
- b. ensuring that all applications filed for positions advertised under this plan are complete and current and are accompanied by a current supervisory appraisal of performance, if applicable; and
- c. notifying their supervisors that they want to be considered for vacancies advertised during their absences. In this regard, each employee must make available to his or her supervisor a complete application (e.g., resume, SF-171, OF-612), a current supervisory appraisal, and a memorandum listing the types of positions for which they wish to be considered, grade levels, and the duration of the absence.

**B. DEFINITIONS.**

1. Promotion is the movement of an employee to a position at a higher grade level within the same job classification system and pay schedule or to a position with a higher rate of basic pay in a different job classification system and pay schedule.
2. Demotion is the movement of an employee to a lower grade when both the old and the new positions are under the General Schedule, or the movement of an employee to a position with a lower rate of basic pay when both the old and new positions are under the same type of ungraded wage schedule or in different pay method categories.
3. Reassignment is the movement of an employee from one position into another position having same, less or no greater promotion potential than that offered by the existing or most recent non-temporary, competitive service position.
4. Area of consideration is the designated area of search in which enough high quality candidates can be expected to be located for a particular position or group of positions announced under competitive procedures.
5. Qualified candidates are those who meet established qualification requirements for the position (including selective placement factors).

6. Well-qualified candidates are those who exceed basic qualification requirements determined by the employing organization on the basis of objective, job-related criteria.

7. Best qualified candidates are those who rank at the top when compared with other eligible candidates evaluated under competitive merit promotion/staffing procedures for a position. Referrals of candidates evaluated under the competitive procedures to the selecting official are made from among this group.

8. Priority consideration is a possible remedy for an erroneous merit promotion action. It means that the qualified applicant is to be considered by the selecting official ahead of other candidates for the next appropriate vacancy. However, the selecting official is not required to select or to defend his or her non-selection of the qualified applicant.

9. Career Transition Assistance Plan (CTAP) is a job placement program designed to help Department of Justice employees affected by reduction-in-force procedures.

10. Interagency Career Transition Assistance Plan (ICTAP) is a job placement program designed to help government employees affected by a Federal agency's reduction-in-force procedures.

11. Public official means an individual to whom the authority has been delegated, to appoint, employ, promote or advance individuals, or to recommend individuals for appointment, employment, promotion or advancement.

12. Relative means father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

13. Chain of Command is the line of supervisory personnel that runs from an employee to the head of his or her agency.

**C. COMPETITIVE ACTIONS.** All staffing actions, including those listed in this section, are covered by this plan unless specifically excluded under paragraph D, below. Competitive actions include, but are not limited to:

1. reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in the competitive service (except as permitted by reduction-in-force regulations);

2. transfer to a position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service;
3. movement between pay schedules or classification systems which would be a change to a higher representative rate of pay;
4. reinstatement to a permanent position or temporary position at a higher grade or with more potential than a position previously held on a permanent basis in the competitive service;
5. ~~selection for training which is part of an authorized training agreement, part of a promotion program, or required before an employee may be considered for a promotion as specified in 5 CFR Section 410.302;~~
6. time-limited promotions for more than 120 days to higher graded positions (prior service during the preceding 12 months under noncompetitive time-limited promotions and noncompetitive details to higher graded positions count toward the 120-days total). A temporary promotion may be made permanent without further competition provided the temporary promotion was originally made under competitive procedures, and the fact that it might lead to a permanent promotion was made known to all potential candidates;
7. all term promotions require competition; and
8. details of more than 120 days to a higher graded position or to a position with higher promotion potential (prior service during the preceding 12 month under noncompetitive details to higher graded positions and noncompetitive time-limited promotions count toward the 120-day total).

**D. NONCOMPETITIVE ACTIONS.** Unless otherwise restricted by CTAP, ICTAP or RPL rules, the competitive procedures of this plan do not apply to:

1. Career ladder promotions. These are promotions without competition when an employee, at an earlier stage, was selected under competitive promotion procedures, from a civil service register, by direct hire, by noncompetitive appointment, or noncompetitive conversion for a position with an established career ladder, intended to prepare the employee for the full performance level of the position.
2. Reclassification actions when:
  - a. there is no significant change in duties or responsibilities and the position is upgraded due to issuance of a new classification standard or the correction of a classification error; or

b. a change in duties and responsibilities results in the position being reclassified at a higher grade and ALL of the following provisions are met:

(1) The employee continues to perform the same basic functions of the former position and the duties of the former position are administratively absorbed into the new position.

(2) The addition of the duties and responsibilities does not adversely affect another incumbered position (for example, a supervisor could not take duties from one employee and assign them to another resulting in one position being downgraded and the other upgraded).

(3) The addition of the duties and responsibilities does not provide one employee with an unfair advantage over other employees who are qualified to perform them (for example, a supervisor takes duties and responsibilities which he or she knows--or has good reason to believe--are grade-enhancing, and arbitrarily assigns them to a particular employee even though there are other employees who are equally qualified to perform these duties and responsibilities).

3. A temporary promotion, or detail to higher graded position or a position with known promotion potential of 120 days or less.

4. A position change made permanent from a temporary or term promotion to a higher grade position, provided the action was originally made under competitive procedures and it was made known to all competitors at the time that the temporary or term promotion might lead to a permanent assignment.

5. Promotion, reassignment, demotion, transfer, reinstatement, or detail to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service, and did not lose because of performance or conduct reasons.

6. Selection of a candidate from the DOJ Priority Referral and Placement List (RPL) to any position for which registered, including positions with more promotion potential or at a higher grade.

7. RIF related reassignments to:

a. Different pay systems which result in an employee receiving higher pay.

b. Positions with more promotion potential in a reduction-in-force situation. (A RIF does not actually have to be underway for the exception to apply. However, if a RIF is

not in process, this provision would apply only to employees whose positions have been identified for abolishment, and only after they have been notified of the anticipated abolishment.)

8. Re-promotion to a grade previously held in a nontemporary position in the competitive service from which the employee was separated or demoted for other than performance or conduct reasons.

9. A corrective action taken as a remedy for failure to receive proper consideration in a competitive promotion/staffing action (e.g., placement stemming from priority consideration, successful pursuit of a discrimination complaint).

10. Any personnel action as directed by the Department of Justice (DOJ), the Office of Personnel Management (OPM), the Merit Systems Protection Board (MSPB), arbitrator, or other organizations having the authority to impose a decision upon the EOIR.

**E. MANAGEMENT OPTIONS:** At their discretion and within current OPM and DOJ initiated hiring restrictions (e.g., CTAP, RPL, ICTAP), supervisors may fill positions by means other than the competitive procedures described in this plan. Options include, but are not limited to:

1. OPM and Delegated Examining Unit (DEU) Certificates of Eligibles.
2. Special hiring authorities, such as, veterans readjustment appointments and handicapped appointments, or
3. Selection of a candidate who is eligible for noncompetitive placement can be made at any point, regardless of vacancy announcement opening or closing dates.

In addition, supervisors have the right to:

- a. decide not to make a selection;
- b. select from any other appropriate source of candidates at any point in the selection process;
- c. extend the closing date;
- d. enlarge the area of consideration; and
- e. readvertise.

**F. DISCIPLINARY PENALTIES.** Any official found to have improperly discriminated on the basis of a candidate's color, race, religion, national origin, partisan political affiliation, marital status, nondisqualifying disabilities, age, gender, sexual orientation, or other non-merit grounds or on the basis of personal favoritism in the rating of an employee or in making a selection may be subject to disciplinary action as circumstances warrant.



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**G. PROHIBITION AGAINST NEPOTISM.**

1. A public official shall not advocate one of his or her relatives for appointment, employment, promotion, or advancement to a position in his or her agency or in an agency over which he or she exercises jurisdiction or control.

2. A public official shall not appoint, employ, promote, or advance to a position in his or her agency or in an agency over which he/she exercises jurisdiction or control:

a. one of his or her relatives; or

b. ~~the relatives of a public official of his or her agency, or of a public official who exercises jurisdiction or control over his or her agency, if the public official has advocated the appointment, employment, promotion, or advancement of that relative.~~

3. A public official who recommends a relative, or refers a relative for consideration by a public official standing lower in the chain of command, for appointment, employment, promotion, or advancement is deemed to have advocated the appointment, employment, promotion, or advancement of the relative.

4. The above restrictions do not prohibit an appointment in the competitive service of a preference eligible if (1) his/her name is within reach for selection from an appropriate certificate of eligibles, and (2) an alternative selection cannot be made from the certificate without passing over the preference eligible and selecting an individual who is not a preference eligible.

**H. EMPLOYEE REQUEST FOR INFORMATION.** Unsuccessful candidates for positions filled competitively under this policy are entitled to know the basis on which they were rated and how their individual standings were derived. Selecting officials are not required to justify their selections to unsuccessful candidates. However, upon written request, the following information will be furnished by the personnel staff, either verbally or in writing:

1. whether the candidate was considered for the position,

2. whether the qualification requirements were met,

3. the evaluation criteria used for the position,

4. the values assigned to their own application for each evaluation criterion used, and

5. whether the candidate was in the best qualified group of eligibles from which selection was made.

**I. EMPLOYEE COMPLAINTS.** Employee complaints arising out of the operation of this plan are to be handled in accordance with grievance procedures prescribed in DOJ Order 1771.1B,

any applicable negotiated grievance procedures, or, as appropriate, the equal opportunity procedures prescribed by DOJ Order 1713.4. Nonselection from among a group of properly ranked and certified candidates is not a basis for a grievance. The OPM does not accept appeals of promotion actions, although it may investigate the operation of an agency's promotion plan.

**J. UPWARD MOBILITY PROGRAM.** Subject to the provisions of the Department's Upward Mobility Program, the competitive procedures of this policy will be followed in filling all vacancies under that program.

**K. INITIAL APPOINTMENT AS A SUPERVISOR OR MANAGER.** A selection resulting in an initial appointment as a supervisor or manager requires serving a supervisory one year probationary period of one year, which, if not successfully completed, will result in the return of the employee to a position of no lower grade and pay than he or she occupied prior to assignment as supervisor or manager.

**L. PAYMENT OF RELOCATION EXPENSES.** It is EOIR's policy that relocation expenses are authorized for employees whose transfer/movement to different geographical areas are determined to be in the interest of the government. However, there is no automatic entitlement to reimbursement of relocation expenses upon an employee's change of his/her post-of-duty. Reimbursement of such expense is conditioned upon sound judgment and on affirmative management determination that the transfer/movement is, in fact, in the interest of the government and is not primarily for the convenience or benefit of the employee. In making determinations as to whether a transfer/movement is or is not in the interest of the government, the following guidelines will apply:

1. A management-directed transfer/movement is determined to be in the interest of the government and accordingly payment of relocation expenses is authorized.
2. A transfer/movement requested by an employee for his/her own personal reasons, convenience, or benefit which is subsequently approved by management is determined not to be in the interest of the government for purposes of entitlement to payment or relocation expenses.

**M. REJECTION OF APPLICATIONS.** The following constitutes sufficient basis for rejection of an application:

1. the application is hand delivered or postmarked after the closing date;
2. the application is postmarked on or before the closing date, but is received so late (i.e., more than 5 calendar days after closing date), to consider it would delay the selection process;
3. the application is mailed in a government-paid envelope, delivered via government special messenger, or telefaxed from a Government fax machine;

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4. the application is incomplete or does not include enough information on which to make an eligibility or qualification determination; or

5. the application is from a non-status candidate (if consideration is limited to status candidates only); or outside the area of consideration.

**N. AREA OF CONSIDERATION.** The area of consideration should be sufficiently broad to afford employees reasonable opportunity for advancement and to provide an adequate supply of highly-qualified applicants. Managers are encouraged to use the broadest reasonable area of consideration to promote effective recruiting. The minimum areas of considerations are:

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1. GS-12 and below: all status employees of EOIR within the commuting area who are covered by this plan;

2. GS-13: all status employees of EOIR; and

3. GS-14 and above: all status employees in the Department of Justice. Exceptions to this minimum area of consideration may be granted by the Personnel Officer on a case-by-case basis for positions to be filled:

- during a hiring freeze;
- during times of severe budget constraints; or
- for which a sufficient number of highly qualified candidates (3 or more) are available for selection from within the organization.

Exceptions for circumstances other than those cited above, are approved by the Director of Personnel, Justice Management Division.

The area of consideration may be broadened for all of the above positions, in order to obtain a sufficient number, i.e., three (3), of qualified applicants.

**O. EMPLOYEES ELIGIBLE FOR AUTOMATIC CONSIDERATION.** Qualified applicants not given proper consideration in a specific promotion action because of a violation of this Plan. Such applicants will be given PRIORITY CONSIDERATION for the next appropriate vacancy before the position vacancy is announced, and MAY be selected on the basis of such consideration as an exception to competitive promotion procedures.

Additionally, before advertising any vacancy, the Department's Reemployment Priority List (RPL), which is contained in the Department's Career Opportunities bulletin, must be reviewed to determine if there are any competitive status Department of Justice employees who have or may be separated by reduction in force or fully recovered from a compensable injury after more than one year. Eligible qualified RPL registrants must be given priority consideration in accordance with 5 CFR Part 330, Subpart B.

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**P. VACANCY ANNOUNCEMENTS.**

1. All vacancy announcements will contain the following information:

- a. announcement number, opening and closing date;
- b. area of consideration;
- c. title, series, grade, entrance pay, and number of positions;
- d. geographic location of position;
- e. duties of the position;
- f. qualification requirements (including any selective placement factors);
- g. evaluation methods to be used;
- h. known promotion potential, if any;
- i. instructions on how to apply;
- j. whether the position is supervisory or managerial (If so, the announcement must also state that the selectee may be subject to the supervisory probationary requirements of 5CFR 315.);
- k. whether reimbursement for relocation expenses is authorized in the event selection is made of a candidate from outside the commuting area;
- l. a statement of the amount of travel involved, if the position requires more than occasional travel;
- m. a statement that the principles of equal employment opportunity will be adhered to in all phases of the promotion process;
- n. privacy act statement;
- o. a statement that the position requires a National Security Clearance, if applicable, and that a urinalysis is required;
- p. any non-standard condition of work (e.g., frequently required overtime);
- q. a statement that reflects any U.S. citizenship requirement; and
- r. information on how CTAP or ICTAP candidates may apply, including document proofing eligibility and definition of well-qualified.

2. Managers are encouraged to use the longest reasonable open announcement period to promote effective recruiting. The minimum open announcement period for all vacancies (e.g., vacancies with an area of consideration of EOIR wide, Department wide, Government wide, all sources) is 10 work days.

**Q. QUALIFICATION STANDARDS.**

1. Candidates will be rated basically eligible for a position if they meet the minimum qualification requirements for a General Schedule position described in the OPM Qualification Handbook, as supplemented by valid job-related selective placement factors, if any.

2. Selective placement factors (i.e., knowledge, skills or abilities which are essential for satisfactory performance on the job), are in addition to the basic qualification standards for a position, may apply to specific positions or groups of positions, and may be established if they

are essential to successful performance in the position to be filled. The need for such requirements must be clearly demonstrated in the position description. Applicants who do not meet these factors are ineligible for consideration.

3. Quality Ranking Factors (QRF) are knowledge, skills, and abilities which are not part of the minimum qualification requirements, but if possessed, could be expected to significantly enhance the individual's performance of the duties of the position. Applicants who possess the QRFs can be ranked above those who do not, but no applicant can be rated ineligible for failure to possess a QRF.

4. Job analysis is the method used to identify the knowledge, skills, and abilities (KSAs) important to a position. The job analysis must be based on and related to the official classified position description. KSAs are defined below:

a. Knowledge—An organized body of information, usually of a factual or procedural nature, which, if applied, makes adequate performance of the job possible. Examples include knowledge of federal budget processes, knowledge of personnel staffing rules and regulations, and knowledge of management principles, practices, and techniques.

b. Skill—The proficient manual, verbal, or mental manipulation of data or things that are observable, qualifiable, and measurable. Examples include skill in typing, and skill in driving an automobile.

c. Ability—Competence to perform an observable behavior or a behavior that results in an observable product. Examples include ability to follow directions, ability to communicate both orally and in writing, and ability to devise a filing system.

5. To be eligible for consideration for supervisory positions, candidates must meet the supervisory qualification standards published in the OPM Qualification Handbook in addition to basic qualifications.

#### **R. JOB ANALYSIS AND CREDITING PLAN.**

1. A job analysis and crediting plan will be developed for each vacancy advertised. For each vacancy announced at multiple grade levels, a job analysis and crediting plan must be completed for each grade level, unless there is no difference in the selective placement factors and/or quality ranking factors at the different grade levels.

2. The job analysis will be conducted and the crediting plan developed by a subject matter expert (SME) (i.e., a person who has had experience working in or supervising that type of position, who is thoroughly knowledgeable about the duties and responsibilities of the job, and is at least in a grade equivalent to the position to be filled, but shall not be an applicant for the position being filled). The SME normally will be assisted by a personnel specialist or other

individual, who is familiar with the job analysis/crediting plan process, and who will serve as a technical advisor.

3. The crediting plan is the written basis for assigning points in evaluating a candidate's training, education, and experience background against the required Knowledge, Skill, and Abilities (KSA's). Each crediting plan will provide for assignment of point values for each KSA from one (1) through five (5).

4. Each KSA will be described, at the minimum, for three levels (i.e., at the minimally satisfactory [1 point], satisfactory [3 points], and outstanding [5 points] levels). This will provide the rater/panel the discretion to award a range of point values if the candidate falls short or exceeds the minimally satisfactory or satisfactory level definitions.

5. A KSA may be weighted to give a greater point value, if the job analysis demonstrates that a KSA is significantly more critical to predicting performance in the job than others. If a KSA is weighted, it must be justified, in writing, relative to the position description and for documentation of the merit staffing case file.

6. An abbreviated crediting plan may be used if there are ten or fewer eligible, qualified candidates who are required to compete for the position. Such a plan would describe only the satisfactory level of each KSA developed to identify well-qualified candidates (e.g., KSAs are defined at the minimally satisfactory, satisfactory, and outstanding level - only the satisfactory level is required in an abbreviated plan). Candidates who meet or exceed the satisfactory level descriptions would be well qualified. Those candidates whose qualifications fall short of the requirements would not be well qualified for the position.

S. **EVALUATION AND RANKING CRITERIA.** The best qualified candidates will be identified through an impartial evaluation of eligible candidates based upon uniformly applied job-related evaluation criteria. The following factors will provide a framework for determining the appropriate criteria for each position:

1. Experience. Experience is to be evaluated in terms of the position to be filled. Use of length of experience may be used only to the extent to which it can be shown to be a valid job-related factor for the position being filled. This limitation does not rule out length of service as a tie breaker if, after all appropriate evaluation factors measuring quality have been applied, there are identical ratings among candidates.

2. Training and Education. Pertinent training, self-development, and outside activities determined to indicate effective performance in the position to be filled will be considered only to the extent that they are clearly job-related or clearly provide evidence of learning ability where this is a requirement for successful performance in the job.

3. Performance Appraisal. All applicants must submit a performance appraisal completed within the last year. Only factors that have a significant relevance to the position to be filled will be considered.

4. Awards. An applicant's achievement that earned him/her special recognition will be assessed in terms of the relevance to the position to be filled.

## T. EVALUATION AND RANKING PROCEDURES.

1. Initial Review of Applications. Before beginning the evaluation and ranking procedures, the personnel staff will first review all applications to ensure that each applicant:

- a. is within stated area of consideration;
- b. has competitive status;
- c. meets minimum qualifications, including selective placement factors, if any;
- d. meets time-in-grade requirements, if appropriate; and
- e. has submitted all required documentation as stated in the vacancy announcement.

2. Responsibility for Rating and Ranking.

a. If there are ten (10) or fewer qualified candidates at a given grade level, rating and ranking is not required. However, the Human Resources staff will screen all candidates to ensure that they meet the basic qualification requirements for the position, including any selective factors. The specialist will also use one of the following methods to distinguish the well-qualified candidates:

(1) The specialist will identify job-related criteria to distinguish well-qualified candidate(s) from those who only meet the minimum qualification requirements and refer only the well-qualified candidate(s) to the selecting official; or

(2) Candidates will be rated and ranked against an established crediting plan under regular evaluation procedures, and the well-qualified candidate(s) will be referred to the selecting official.

If there is an insufficient number of well-qualified candidates, consideration will be given to expanding the area of consideration. If there are no well-qualified candidates and further expansion of the area of consideration is impractical (for documented reasons), then the candidates in the qualified group may be considered for the position.

Note. There is no requirement for formal evaluation of qualified candidates eligible for noncompetitive consideration. These candidates may be referred for selection consideration noncompetitively, i.e., without evaluation other than qualification requirements.

b. If there are more than ten (10) eligible candidates, the following provisions apply:

(1) For positions GS-1 through GS-12, evaluation of candidates will normally be made by the HR staff, although panels may be used when necessary or when requested by the hiring organization.

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(2) For positions at the GS-13 level and above, **rating panels are mandatory** and will be convened by the HR staff.

c. Panel Membership and Function.

(1) Promotion panels must consist of at least two (2) Subject Matter Experts (SME), and a HR staff, who serves for the sole purpose of providing orientation and technical assistance on rating techniques and procedures.

(2) Generally, members of promotion panels should be at the same or higher grade than the position being filled.

(3) In no case will a candidate for the vacancy or the selecting official be a member of the panel.

(4) The rating panel will rate candidates on each KSA using all available written sources of information (i.e., KSA Supplemental Statement and application for employment [e.g., SF-171, OF-612, or resume]). Panel members shall rate candidates independently, then review and discuss each candidate's individual factor scores to ensure that significantly differing scores have not been awarded; panel members should try to resolve any such rating differences and document their resolution effort. To obtain final scores for each candidate, the HR staff will total all panel members' individual scores.

(5) Panel members will be briefed by the HR staff regarding their responsibilities. Panel members will have the option of convening in the same location or performing the ranking function independently. In either instance all material related to the process must be secured and there must be no discussion among panel members during the rating process. Should panel members convene separately, each will be required to certify that they will ensure the integrity of the merit promotion process, to include securing all related panel material in their offices. Upon rating basically qualified applicants, panel members will reconvene as a group with the HR staff to rank applicants and to determine and establish the best qualified (BQ) list.

U. **REFERRAL OF CANDIDATES.** Referrals of candidates will be developed within current staffing guidelines and restrictions (e.g., CTAP, RPL, ICTAP).

1. Based upon the span of numerical scores, the panel members must determine which of the eligible candidates are best-qualified and should, therefore, be referred to the selecting official. The best-qualified candidates are those individuals with the highest scores. There should be a significant or meaningful break in numerical rankings separating the best qualified group from the remaining candidates. Well-qualified CTAP and ICTAP candidates will be referred along with best-qualified candidates.



2. Normally, from five (5) to ten (10) best-qualified candidates will be referred for each position. However, this number may vary based on the different grade levels that the position was advertised at, e.g., referral of best-qualified candidates at each grade level; the total number of qualified applicants; the past history of declinations for same or similar positions; the lack of meaningful break in scores; etc.
3. The names of best-qualified candidates are entered alphabetically on the "Merit Promotion Referral" list for referral to the selecting official. Individual scores will not be listed.
4. When a vacancy has been announced at multiple grade levels, the Merit Promotion Referral list must be prepared one of the following ways:
  - a. Those candidates who have been identified as best-qualified for a particular grade level are to be grouped separately on the Merit Promotion Referral list from those determined to be best-qualified for other grade levels; or
  - b. Separate Merit Promotion Referral lists containing the names of those identified as best-qualified may be prepared for each grade level for which the candidates have been evaluated.

#### V. SELECTION OF CANDIDATES.

1. When the selecting official receives a merit staffing certificate, he or she may elect to interview the candidates referred. If one candidate is interviewed, all candidates in the same ranking category and grade level should be interviewed (i.e., not mandatory to interview all, but highly recommended). If one or more candidates are not available for the interview within a reasonable period (normally, one week) the selection process need not be delayed pending their availability. Telephone interviews are appropriate when a candidate is unable to appear because of schedule, geographic location, etc. However, candidates interviewed by telephone should be asked the same questions as other candidates.
2. The selecting official is not required to fill a vacancy by selection of one of the candidates listed on the promotion certificate. He/she may request expansion of the area of consideration or additional recruitment efforts, or may fill the job by some other type of authorized placement action. However, if selection is to be made from among those candidates who were rated and ranked under merit promotion procedures, the range of selection is limited to those candidates who have been referred for consideration.
3. The selecting official should make a merit staffing selection within a reasonable period of time, i.e., 30 days from the date of issuance of the merit promotion certificate. However, the selection official may ask for an additional 60 day extension. Extensions may not exceed a total of 90 days, from the initial date of certificate issuance.
4. The selecting official's decision to select a particular candidate is subject to the approval of the personnel office, and such other approvals as may be required by law, regulation, or policy. The selecting official shall indicate his/her tentative decision on the Merit Promotion Candidate

List. The selecting official shall forward the Merit Promotion Candidate list, with tentative selection, to the HR staff.

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5. No selection is final until the HR staff arranges for the release of the employee from his/her current employment. Upon the HR staff's approval, the selecting official may announce the selection.

6. The selecting official will conduct and complete required vouchering (i.e., reference checks) on selectee.

**W. EFFECTIVE DATE OF POSITION CHANGES INVOLVING PAY.** Employees selected should be released from their existing positions promptly (normally within 15 calendar days after selection or at the end of the first full pay period after selection). Position changes within the Department involving changes in pay (e.g., promotions, voluntary demotions, reassignment from positions subject to special salary rates to positions not subject to such rates) will be made at the beginning of a pay period, as opposed to dates within a pay period. Position changes involving pay or a change from one pay plan to another will normally be effective on the first day of the first pay period after the servicing HR staff gives final administrative approval of the action. In circumstances where a personnel action, such as described above, also involves a change in supervisors, the effective date will be the first day of the second pay period following final administrative approval by the HR staff, unless the affected supervisors (gaining and releasing) agree on an alternate date.

**X. VIOLATIONS.** Violations of merit staffing policy or procedure will be dealt with promptly, firmly, and fairly. Corrective action may be initiated by the EOIR HR staff, the Department, OPM or MSPB. Action to rectify a violation may involve the employee erroneously promoted, the employee(s) who was not promoted or who was not given proper consideration because of the violation, and/or the officials who caused or sanctioned the violation. The nature and extent of actions taken will be determined on the basis of all facts of the case, with due regard to the circumstances surrounding the violation and to the equitable and legal rights of the parties concerned. The HR staff may direct that the wronged individual be given priority consideration for the next appropriate vacancy.

**Y. ADMINISTRATIVE RECORDS AND DOCUMENTATION.**

1. Every applicant who files for consideration under a Merit Promotion Vacancy Announcement will be notified by the HR staff of the outcome of each consideration received after approval of the action.

2. In accordance with 5CFR Part 335, and ensuring that individuals' rights to privacy are protected, the personnel staff shall maintain temporary records, for a period of 2 years, of each merit promotion case sufficient to allow reconstruction of the promotion action, including documentation on how candidates were rated and ranked.

# APPENDIX 3

U.S. Department of Justice  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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Performance Appraisal Program



**Approval Date:** November 12, 2004

**Approved By:** [REDACTED]

Director, Human Resources, Justice Management Division

**Approved By:** [REDACTED]

Director, Office of Attorney Recruitment and Management

**Approved By:** [REDACTED]

Director, Executive Office for Immigration Review

**Initiated By:**

Executive Office for Immigration Review  
Human Resources Staff

[REDACTED]

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# EOIR Performance Appraisal Program

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## **FOREWORD**

**PURPOSE.** This document establishes the Executive Office for Immigration Review (EOIR) Performance Appraisal Program for EOIR employees.

**SCOPE.** This program applies to employees of all EOIR components, except for Senior Executive Service employees, employees of the Board of Immigration Appeals, Immigration Judges, and Administrative Law Judges.

**EFFECTIVE DATE.** December 1, 2004.

**POLICY.** The EOIR recognizes that performance appraisal, pay, and incentive award programs must be fully integrated with human resource management to motivate and promote the efficient and effective attainment of its mission and program objectives. This performance appraisal program is designed to ensure:

That the performance appraisal program for EOIR employees serves as a tool for executing basic management and supervisory responsibilities and motivating high levels of achievement by:

- (1) Communicating and clarifying agency goals and objectives.
- (2) Identifying individual accountability for the accomplishment of organizational goals and objectives.
- (3) Evaluating and improving individual and organizational accomplishments.
- (4) Using the results of performance appraisal as the basis for adjusting basic pay and determining performance awards, training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.

That covered employees are recognized and rewarded commensurate with the quality of their performance through increases to basic pay and awards appropriate for their level of contribution to the EOIR's and the Department's programs and missions. Within-grade increases, quality step increases, performance awards, superior accomplishment awards and other awards will be granted to motivate employees toward increased productivity and creativity; support and enhance EOIR, Department, and national goals; meet employee recognition needs; and obtain maximum benefits for the Government.

**AUTHORITIES.** This Performance Appraisal Program is established in accordance with the following legal, regulatory, and Departmental policies and guidance.

**Performance Appraisal.** Title 5 of the United States Code (U.S.C.) Chapter 43; Title 5 of the Code of Federal Regulations (CFR) Part 430 (Performance Management); and DOJ Order 1200.1, Part 2, Chapter 15, Performance Management.

**Pay Under the General Schedule.**

Within-Grade Increases. 5 U.S.C. Secs. 5335; 5 CFR Part 531, Subpart D  
(Within-Grade Increases).

**Records of Employee Performance.** 5 U.S.C. Sec. 552a; 5 CFR Part 293, Subpart D  
(Employee Performance File System Records).

**Agency Administrative Grievance System.** 5 CFR Part 771; DOJ Order 1200.1 Chapter  
3-2, Agency Grievance Procedure.



## CHAPTER 1. GENERAL INFORMATION.

### 1. DEFINITIONS.

**Acceptable Level of Competence.** An acceptable level of competence is Successful performance by an employee of the duties and responsibilities of his or her assigned position which warrants advancement of the employee's rate of basic pay to the next higher step of the grade of his or her position, subject to the requirements of 5 CFR Sec. 531.404.

**Appraisal.** The act or process of reviewing and evaluating the performance of an employee against described performance standards.

**Appraisal Period.** The period of time for which an employee's performance will be appraised. For non-attorney employees in EOIR, the appraisal period begins on April 1 of each year and ends on March 31 of the following year, and, for attorneys, the appraisal period begins July 1 of each year and ends on June 30 of the following year, unless it is advanced or deferred for authorized reasons or an alternate appraisal period has been established and approved by the Department.

**Appraisal Program.** The specific procedures and requirements established under the policies and parameters of an agency appraisal system.

**Appraisal System.** The performance appraisal system established by an agency which provides for the identification of critical and, if desired, non-critical elements, establishment of performance standards, communication of both to employees, establishment of methods and procedures to appraise performance against established standards, and appropriate use of appraisal information in making human resources and pay decisions.

**Calendar Week.** A period of any seven consecutive calendar days.

**Critical Element.** A work assignment or responsibility of such importance that unacceptable performances in the element would result in a determination that an employee's overall performance is unacceptable. The law intends that such elements be used to establish individual accountability. Consequently, for non-supervisory employees, critical elements generally are not appropriate for identifying and measuring team performance, which by its definition involves shared accountability.

**Interim Rating.** An interim rating is different than a rating of record in that it is issued for purposes OTHER THAN an official annual appraisal of performance or a written notice at any time that an employee's performance is unacceptable. An interim rating is issued to appraise employee performance during details, temporary promotions, or during assignment to any covered position in which the employee served for at least 90 days during the annual appraisal cycle. The weight given to interim ratings in deriving the employee's rating of record should be proportionate to their share of the appraisal cycle.

**Mandatory Element.** A work assignment or responsibility which is deemed by high-level officials as so important as to be a required element of performance plans for specified positions.

**Minimum Appraisal Period.** The minimum amount of time in which an employee must have served in a position under written performance elements and standards in order for an appraisal to be

rendered concerning such performance. The minimum appraisal period under this performance program is 90 days.

**Noncritical Element.** A component of an employee's position which does not meet the definition of a critical element, but is of sufficient importance to warrant written appraisal.

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

**Performance Award.** A performance-based cash payment made to an employee based on his or her rating of record. A performance award does not increase base pay.

**Performance Plan.** All of the written, or otherwise recorded, performance elements that set forth the expected performance. A plan must include all critical and non-critical elements and their performance standards.

**Performance Standard.** The management approved expression of the performance threshold(s), requirements, or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, quality, quantity, timeliness, and manner of performance.

**Permanent Position.** A position filled by an employee whose appointment is not designated as temporary by law and does not have a definite time limitation of one year or less. A permanent position includes a position to which an employee is promoted on a temporary or term basis for at least one year.

**Progress Review.** The communication with the employee about performance compared to the performance standards and elements.

**Rating.** See summary rating.

**Rating Levels.** This Performance Program uses five rating levels (Pattern H): Outstanding (two levels above Successful), Excellent (one level above Successful), Successful, Minimally Satisfactory (one level below Successful), and Unacceptable (two levels below Successful). (See chapter 2 for specific individual element and overall rating level definitions.)

**Rating of Record.** 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 rating level which is required annually or at such other times as this Program specifies for special circumstances. This includes the written notice at any time that an employee's performance is unacceptable in one or more critical elements.

**Rating Official.** The individual who is responsible for informing the employee of the elements of his or her position, establishing performance standards for those elements, appraising performance, and assigning the performance rating. Normally, this is the employee's immediate supervisor.

**Reviewing Official.** The supervisor who assigns, controls, and is responsible for the work of the rating official, normally the rating official's immediate supervisor. In the event the position of reviewing official is vacant or for other appropriate reasons, a higher level official in the organization may serve in this capacity if the individual is in a position to evaluate the employee's performance.

**Summary Rating.** The written record of the appraisal of the critical and noncritical elements of an employee's position and the assignment of a summary rating level. Under this Program, a summary rating can be either an interim rating or a rating of record.

**Waiting Period.** The minimum time requirement of creditable service to become eligible for consideration for a within-grade increase.

**Weighted Critical Element.** A critical element which has been designated by the rating official and approved by the reviewing official as carrying more weight or importance than other critical elements.

**Within-Grade Increase.** A periodic increase in an employee's rate of basic pay from one step of the grade of his or her position to the next higher step of that grade. The term within-grade increase is synonymous with the term step-increase used in 5 U.S.C. Sec. 5335.

## 2. PROGRAM REQUIREMENTS.

- A. Appraisal Period. The length of the appraisal period under this program will be one year.
- B. Summary Rating Level Pattern. Within the various patterns of summary levels provided for in 5 C.F.R. § 430.208(d), this performance appraisal program uses pattern H.
- C. Performance Elements. Employee performance plans must include at least two critical elements and, where applicable, non-critical elements.
- D. Mandatory Elements. This program provides for the application of mandatory performance elements as required by the Attorney General or the Deputy Attorney General.
- E. Element Appraisal Levels. This program provides for five element appraisal levels: Outstanding, Excellent, Successful, Minimally Satisfactory, and Unacceptable.
- F. Performance Standards. A performance standard must be established at the successful level and may be established at other levels.
- G. Minimum Period of Performance. The minimum period of performance which must be completed before a performance rating can be given is 90 days.
- H. Latest Date for Establishing a Rating of Record. It is strongly encouraged that ratings of record are completed within 60 days after the conclusion of the rating period.
- I. Administrative Actions Initiated under a Previous Program. Any administrative action already initiated (e.g., an action taken against an employee for unacceptable performance under 5 U.S.C. 4303) under a previous appraisal program shall continue to be processed in accordance with the law and that program.

**3. TRAINING.** Training and information on this performance appraisal program will be provided to covered employees as well as their managers and supervisors to assure effective administration. Topics covered will include the EOIR's Appraisal Program, performance appraisal, and pay incentive programs (i.e., performance awards, superior accomplishment awards, within-grade increases, and quality step increases).

**4. PROGRAM EVALUATION.** The effectiveness of performance management under this Program will be evaluated periodically on an organizational level.

**5. RESPONSIBILITIES.**

**The Assistant Attorney General for Administration (AAG/A) shall:**

- (1) Have overall responsibility for ensuring that this program conforms to applicable law and regulation.

**The Director, Human Resources Staff, JMD, shall:**

- (1) Subject to the general supervision of the AAG/A, exercise the authority of the AAG/A in the development and implementation of the Department's Performance Management System, in accordance with 5 CFR 430.204.
- (2) Assure that DOJ component programs are in conformance with current laws, applicable rules and regulations, and the requirements of the Department's Performance Appraisal System, as approved by the Office of Personnel Management.
- (3) Provide technical assistance to the DOJ components in the implementation of performance management.

**The Director of EOIR is responsible for the proper administration of this performance appraisal program. In this regard, she/he shall:**

- (1) Ensure the proper management of employee performance is consistent with this program and the Department's Performance Appraisal System and Department policy.
- (2) Establish procedures to manage the performance appraisal process, such as reviews of standards and ratings for difficulty and strictness of application.
- (3) Ensure that performance pay decisions are reviewed at a higher level than the rating official for equity and consistency of the decisions throughout the organization.
- (4) Inform employees of their rights under this program.
- (5) Provide training and periodic reminders to managers and supervisors concerning their duties and responsibilities under this program and issue supplementary directives as necessary.
- (6) Develop implementing instructions governing the identification of critical and noncritical elements and the establishment of performance standards, within the parameters prescribed by this program.
- (7) Ensure that organizational and performance expectations held by the Department's senior leaders are communicated efficiently and effectively, at each level from the SES to the front-line workforce.

**EOIR's Human Resources Officer shall represent EOIR's Director in the administration of the EOIR performance appraisal program and:**

- (1) Guide the development of EOIR performance appraisal programs consistent with law, regulation, and DOJ policies.
- (2) Provide staff assistance to and educate managers, supervisors, and other employees in their duties and responsibilities under this program, by:
  - (a) Providing necessary training to managers and supervisors so that they can effectively carry out their responsibilities for communication with and appraisal of employees, and relating performance appraisal information to human resources decisions.
  - (b) Providing training and orientation to employees to ensure that they understand the objectives and provisions of the performance appraisal program.
- (3) Establish procedures to notify supervisors of their responsibilities to provide timely and continuous performance appraisals in the course of normal supervisory activities and to provide timely preparation, review, and approval of ratings.
- (4) Integrate the EOIR performance management program with other human resources management programs.

**Rating Officials shall:**

- (1) Inform employees of the level of performance required for each described rating level.
- (2) Prepare written performance plans, identifying critical and, if appropriate, noncritical elements, as well as written standards against which performance in each element will be measured.
- (3) Appraise performance on a continuing basis and keep employees informed of how they are measuring up to performance standards.
- (4) Give guidance and assistance to each employee, helping the promising worker to progress according to ability, and assisting the employee whose work is below the Successful level to improve.
- (5) Assign interim ratings and ratings of record to subordinate employees as prescribed on a timely basis.
- (6) Give appropriate weight to performance ratings issued by prior supervisors or knowledgeable management officials during the current appraisal period in preparing ratings of record for employees under their supervision.
- (7) Ensure that ratings are appropriate and properly reflect the performance of the employees under their supervision.
- (8) Where applicable, review the performance appraisal practices of subordinate supervisors and provide advice or instruction as appropriate.

**Reviewing Officials shall:**

- (1) Review and approve performance standards and performance ratings and ensure that ratings are appropriate and properly reflect the performance of the employees under their supervision.
- (2) Where applicable, review the performance appraisal practices of subordinate supervisors and provide advice or instruction as appropriate.
- (3) Ensure that pay decision recommendations and/or determinations are consistent with EOIR and Departmental policy.

**Each employee shall:**

- (1) Familiarize himself/herself with the purposes and mechanics of the performance appraisal program.
- (2) Request clarification from the supervisor of any element or performance standard not clearly understood.
- (3) Advise the supervisor of any factors or circumstances which the employee believes should be considered in appraising performance.
- (4) Participate with the supervisor in discussing the appraisal of performance.

## CHAPTER 2. PERFORMANCE APPRAISAL.

**1. COVERAGE AND EXCLUSIONS.** The performance appraisal requirements of this Program apply to all employees throughout the EOIR except for the following employees/positions:

- Employees of the Board of Immigration Appeals
- Senior Executive Service employees.
- Immigration Judges<sup>1</sup>
- Administrative Law Judges
- Employees or positions for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12 month period.

## 2. THE PERFORMANCE APPRAISAL PROCESS.

### A) Principles.

(1) Performance appraisal is a continuous process. It is an integral part of a sound employee/supervisor relationship involving communication between employee and supervisor concerning requirements or job expectations, performance necessary to achieve them, and progress in terms of meeting stated objectives.

(2) Performance appraisal is a joint process involving both employee and supervisor. It includes meaningful employee participation in setting work objectives and developing specific plans for improving personal performance and productivity.

(3) Conceptually, performance appraisal is a management tool designed to ensure that the mission requirements of an organization, as a whole, are met by measuring, tracking, and improving individual employee productivity. Accomplishment of organizational objectives should, as appropriate, be included in an employee's performance plan by incorporating objectives, goals, program plans, work plans, or other similar means that account for program results. Using an organization's mission as a starting point, functional delegations are made to various subordinate organizations. Based upon these delegations, position descriptions are developed for each employee. In practice, the position description, organizational missions and goals, and the supervisor's expectations provide the basis for the development of specific job-related objectives for each position. These objectives constitute the performance standards for the position and can generally be expressed in terms of quality, quantity, timeliness, and manner of performance. Employees are informed of these standards, and, as they perform their duties, performance is regularly monitored and appraised through informal day-to-day communications as well as structured periodic reviews. This process generates objective criteria which can form the basis for decisions on a variety of human

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<sup>1</sup>Except that Assistant Chief Immigration Judges and Deputy Chief Immigration Judges shall be rated on their performance of non-adjudicative (managerial) responsibilities under this appraisal program.

resources actions i.e., promotion, awards, pay increases, training, career enhancement, retention, and, if warranted, reassignment, demotion, or removal.

**B) Procedures.** The ongoing process of performance appraisal has specific procedural requirements.

**(1) Preparation of the Performance Plan.**

This Program requires that major job elements and performance standards be formally recorded in writing and be formally reviewed and approved at the beginning of the appraisal period by a person at a higher level in the organization than the rating official to ensure appropriate levels of quality and difficulty of performance standards within each employee's performance plan and in performance plans across the organization.

(a) At the outset of the rating period (usually within 30 days) or, in the case of an employee entering a new position, as soon as possible (but no later than 30 days) after his or her entry into the position, a performance plan must be either developed or reviewed for continued appropriateness and issued to each employee. Employee participation is encouraged in the development of the performance plan. Critical elements **MUST** be included (and be so designated) in each employee's performance plan; noncritical elements **MAY** be included.

The performance plan can be modified, as appropriate, at any time during the appraisal cycle to reflect changing priorities or shifts in workload. Modifications are subject to higher level review requirements. Employees must sign and date the modified plan to signify that they have been notified of the changes.

(b) Performance standards corresponding to the job elements must be established and communicated to each employee. Standards developed mutually by the supervisor and the employee will be more objective and realistic and more likely to evoke employee support. However, the final authority for establishing the elements and standards rests with the rating and reviewing officials. (See appendix 1 for further guidance on the preparation of performance plans.)

**(2) Determination of Major Job Elements.**

Critical and noncritical elements can be regarded as either capsulized aspects of the most important duties and responsibilities associated with one's position or specific projects or tasks which can be logically inferred from the duties and responsibilities cited in the position description. Performance plans must include at least two critical elements; however, there is no predetermined number of elements which must be identified either as critical or noncritical. While this Program does not mandate the methods or procedures to be used in the identification of such elements, it does require that these elements be identified and communicated to each employee at the outset of the rating period. In addition, all positions require, in varying degrees, individual outputs. Many positions also carry organizational output features. Therefore, accomplishment of organizational objectives will (to the extent appropriate) be included in performance plans.



### **(3) Determination of Performance Standards.**

A performance standard is a statement of the expectations or requirements established by management for a critical or noncritical element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.

(a) Performance standards must clearly state the human capital objectives of the component and tie in with organizational goals and desired results. The standards must include critical elements which align with EOIR's strategic plan and which are consistent with the DOJ Strategic Plan.

(b) At the outset of the rating period, performance standards should be written and recorded for each critical and noncritical element which has been identified in the employee's performance plan. Standards must be measurable, observable, and/or verifiable.

(c) Performance standards **MUST** be written at the Successful level. They may also be written at additional levels. Although this program is only requiring that they be written at the Successful level, EOIR components may impose requirements for additional performance levels.

(d) The absence of a written standard at a given rating level does not preclude the assignment of a rating at that level.

### **(4) Required Higher Level Review of All Performance Plans.**

All employee performance plans and modifications to them are subject to the higher level review process discussed in chapter 3.

### **(5) Required Progress Review.**

(a) Performance appraisal is a continuous process. While informal communications between supervisors and subordinates provide helpful feedback on a day-to-day basis, they must be augmented by at least one structured progress review. This performance appraisal program requires an initial, formally structured meeting between the rating official and the employee at the beginning of the rating period at which time job elements and performance standards are discussed. Additionally, at least one formal progress review is to be conducted during the rating period, normally halfway through the cycle.

1 At a minimum, employees must be informed of their performance by comparison with the job elements and standards established for their positions.

2 If either the rating official or the employee feels that modifications to previously established elements or standards are warranted because of

unforeseen shifts in workload or changes in priorities, he/she must be prepared to discuss possible alternatives.

3 If the rating official feels that performance in one or more of the established performance standards is lacking, he/she should be prepared to discuss possible corrective actions as well as the ramifications of unimproved performance.

4 The progress review session should not be limited solely to a discussion of basic weakness or deficiencies, but also serve as a forum to encourage employees whose performance is Successful or Excellent to strive for even greater achievement.

(b) If modifications in either elements or standards are warranted, they must be mutually discussed and recorded at this time. Such modifications are also subject to the higher level review process in chapter 3 of this Program. At the end of the review session, both the rating official and the employee should share a common understanding of where the employee stands in relation to his or her performance plan, what is expected of the employee through the remainder of the rating period, and what actions, if any, will be initiated as a result of performance to date. The employee and the rating official will each sign and keep a copy of the performance plan, acknowledging that the progress review was conducted and reflecting any modifications in the elements and/or performance standards.

#### **(6) Formal Appraisal of Performance.**

If an employee has served in his/her current position under written performance elements and standards for at least 90 days when the performance rating cycle ends, a written rating of record must be given to the employee as soon as practicable after the end of the appraisal period. The completed rating of record is not to be communicated to the employee until AFTER the higher level review procedure discussed in chapter 3. This does not preclude communication about performance between a supervisor and employee prior to the determination of the rating of record.

(a) Appraisal of each critical and noncritical element and assignment of an appropriate overall rating. Each employee must be appraised on each critical and noncritical element of the performance plan, unless the employee has had insufficient opportunity to demonstrate performance on the element. On the rating date or as soon as possible thereafter, the rating official should review his or her notes and comments on the employee's performance and be prepared to compare the overall achievements of the employee with respect to each element and standard. The rating official should then briefly summarize in narrative fashion the achievements of the employee against the performance standard established for the elements. Individual element ratings are assigned to each of the recorded elements and an appropriate overall rating is then assigned which takes into account the employee's strengths and weaknesses in each individual element. The rating of a disabled veteran who has been absent from work to seek medical treatment may not be lowered because of such absence.

**(b) Individual Element Rating Levels.** The rating assigned on each individual element of the job may be Outstanding, Excellent, Successful, Minimally Satisfactory, or Unacceptable.

1) **Outstanding.** Performance on an individual critical or noncritical element of the job which clearly demonstrates a level of achievement which exceeds to an exceptional degree the performance standards for Successful established at the beginning of, or modified during, the rating period. Performance at this level so exceeds what is normally required of the job that it is deserving of special recognition.

2) **Excellent.** Performance on an individual critical or noncritical element of the job which markedly exceeds the performance standards for Successful established at the beginning of, or modified during, the rating period.

3) **Successful.** Performance on an individual critical or noncritical element of the job which completely meets, or exceeds to a limited degree, the performance standards for Successful established at the beginning of, or modified during, the rating period. Essentially, performance is right ON TARGET.

4) **Minimally Satisfactory.** Performance on an individual critical or noncritical element of the job which just falls short of the performance standards for Successful established at the beginning of, or modified during, the rating period. Performance at this level shows significant deficiencies that require correction.

5) **Unacceptable.** Performance on an individual critical or noncritical element of the job which is substantially below the performance standards for Successful established at the beginning of, or modified during, the rating period. Usually the employee's performance will show serious deficiencies in terms of quantity, quality, timeliness of work, or manner of performance.

**(c) Overall Rating Levels.** The overall rating level is the adjective used to describe the overall performance level of the employee, taking into account both strengths and weaknesses in each individual job element. The overall rating level assigned may be Outstanding, Excellent, Successful, Minimally Satisfactory, or Unacceptable. In the event the Critical elements are evenly divided between two rating levels, the rating official may select the more appropriate of the two levels (provided other applicable minimum requirements for the level selected are met).

1) **Outstanding.** Overall performance in which the employee consistently performs in an exceptional manner with respect to established performance standards. In the individual element ratings, the employee must demonstrate Outstanding performance in a majority of the critical elements of the position and demonstrate Excellent

performance in all other critical elements of the position, and no individual performance element may be less than Successful.

2) **Excellent.** Overall performance in which the employee consistently performs in a manner which exceeds to a marked degree established performance standards. In the individual element ratings, a majority of the critical elements must be rated Excellent or higher and no individual performance element may be less than Successful.

3) **Successful.** Overall performance in which the employee consistently performs in a manner which meets or exceeds to a limited degree the established performance standards. In the individual element ratings, a majority of the critical elements must be rated Successful or higher, no more than one critical element can be rated Minimally Satisfactory, and no individual performance element may be less than Minimally Satisfactory.

4) **Minimally Satisfactory.** Overall performance which is marginally acceptable. It is demonstrated by Minimally Satisfactory performance in more than one critical element of the position (provided that no critical element has been rated Unacceptable). Performance at this level is deficient in important aspects of the job and requires improvement.

5) **Unacceptable.** Overall performance deemed to be unsatisfactory. In the individual element ratings, performance in one or more critical elements has been rated Unacceptable.

#### (7) **Weighted Critical Elements.**

Rating officials may designate one or more critical elements as carrying more weight or importance than other critical elements. The greater weight of these elements, as with all individual performance elements, is normally communicated to the employee at the outset of the rating period. If, however, during the course of the rating period, a change is made to the weight of a critical element (due to a shift in work priorities), the greater weight of the element must be communicated to the employee at least 90 days in advance of serving as the basis for an interim rating or rating of record. Performance of weighted critical element(s) which is at a lower level than a majority of the critical elements can serve as a basis for an overall rating which is lower than a majority of the critical elements.

**EXAMPLE:** Assume that a performance plan has five critical elements and specifies that two are more important than the remaining three. Assume further that the two more important critical elements are rated as Successful and the other three are rated as Excellent. In such a case, even though the majority of the critical elements are Excellent, the overall rating does not have to be Excellent. Rather, because of the greater importance of the elements rated Successful, the overall rating can be Successful. The converse is not true.

Performance of a weighted critical element(s) which is at a HIGHER level than a majority of the critical elements CANNOT SERVE AS A BASIS FOR AN OVERALL RATING HIGHER THAN A MAJORITY OF THE CRITICAL ELEMENTS.

**EXAMPLE:** Again assume that the performance plan has five critical elements, but specifies that two are more important than the remaining three. Assume further that the two more important critical elements are rated as Excellent and the other three as rated as Successful. In such a case, even though the more important critical elements are rated as Excellent, they cannot support an overall rating of Excellent. To do so contradicts this program's requirement that the overall rating must be supported by a majority of the critical elements.

#### **(8) Higher Level Review of Performance Appraisal.**

Before tentative ratings of record may be communicated to employees, they must first be reviewed and approved by a person(s) at a higher level in the organization than the rating official, in accordance with the provisions of chapter 3 of this Program.

(a) The rating of record approved through the higher level review process is final and should be discussed with the employee. The employee should sign the rating form, thereby acknowledging that the rating of record was discussed. The employee's signature does not constitute agreement with the rating of record nor forfeit any rights to grieve the rating of record.

(b) One copy of the approved and signed rating form must be provided to the employee; another copy may be retained by the rating official; and the original form (along with a copy of the employee's performance plan) must be forwarded to the servicing human resources office.

### **3. APPRAISING PERFORMANCE OF EMPLOYEES WHO HAVE BEEN IN THEIR CURRENT POSITIONS FOR AT LEAST 90 DAYS AT THE END OF THE APPRAISAL CYCLE, BUT HAVE CHANGED POSITIONS DURING THE RATING PERIOD.**

**Position Changes Within EOIR.** When an employee changes from one or more positions in the same type of work in EOIR during the appraisal cycle (in which he/she served under written elements and standards for 90 days or more), an interim rating must be prepared. This interim rating, along with the performance plan upon which it was based, must be forwarded to the new supervisor for inclusion in the rating of record due at the end of the appraisal cycle. The weight given to this interim rating should generally be proportionate to its share of the appraisal period. When such interim ratings are used to develop a rating of record, both the interim ratings and the performance plans on which they are based must be attached to the final rating of record.

**Transfers From Other Agencies.** If an employee transfers from another agency into EOIR during its appraisal cycle, any summary ratings which are forwarded from the losing agency (and which cover the same type of work and encompass periods of time included in EOIR's performance appraisal cycle) **MUST** be considered in deriving the rating of record. Weight given to these ratings should be proportionate to their share of the appraisal cycle.

#### **4. APPRAISING PERFORMANCE OF EMPLOYEES WHO HAVE NOT BEEN IN THEIR CURRENT POSITIONS FOR 90 DAYS AT THE END OF THE APPRAISAL CYCLE.**

To assure equitable performance pay for employees, every effort should be made to obtain and use performance information for purposes of preparing ratings of record. In keeping with this objective, if an employee fails to complete the 90 day minimum appraisal period by the end of the organization's appraisal period because of reassignment, change in supervisors, or other legitimate management reason:

**Extension of Appraisal Period.** The employee's appraisal period shall be extended for the amount of time necessary to meet the minimum appraisal period, at which time a rating of record shall be prepared.

**Pay Decisions.** Pay decisions affecting the employee will be made in accordance with OPM regulations.

#### **5. APPRAISING PERFORMANCE OF EMPLOYEES WHO ARE DETAILED OR TEMPORARILY PROMOTED.**

**Within the EOIR.** If the employee is detailed or temporarily promoted **WITHIN** EOIR, and if the assignment is expected to last 120 days or longer, written elements and standards **MUST** be provided to the employee as soon as possible, but no later than 30 days, after the beginning of the detail or, temporary promotion. An interim rating must be prepared for an employee when the detail or temporary promotion lasts at least 90 days. The weight given to this interim rating should generally be proportionate to its share of the appraisal period.

**Outside EOIR.** If the employee is detailed **OUTSIDE** EOIR, reasonable efforts must be made to obtain appraisal information from the outside organization which shall be considered in deriving the employee's next rating of record. Accordingly:

- (1) If the employee has served in the EOIR for the established minimum period (i.e., 90 days), the employee must be rated. The rating of record shall take into account appraisal information obtained from the borrowing organization.
- (2) If the employee has not served **IN** the EOIR for the established minimum appraisal period, but has served for the minimum appraisal period **OUTSIDE** EOIR, reasonable efforts must be made to prepare a rating of record using appraisal information obtained from the borrowing organization or the rating is deferred until the employee is able to serve the minimum appraisal period

within the EOIR or the borrowing organization is able to provide appraisal information.

## 6. PROCESSING AND RETENTION OF PERFORMANCE RATINGS.

**Timeliness.** In as much as performance appraisal provides the basis for pay determinations for covered employees, particular care must be taken to ensure that approvals of tentative ratings of record are promptly obtained and that ratings of record are submitted in a timely manner to servicing human resources offices. It is important that control dates for the receipt of approved ratings of record by human resources offices be established to permit sufficient time for entering the ratings of record into the automated Personnel/Payroll System.

(1) Processing Ratings of Employees Eligible for Ratings of Record as of the End of the Appraisal Period.

(a) Organizations must complete and forward the ratings of record of all employees eligible to be appraised as of the end of the appraisal period to their servicing human resources offices. It is strongly encouraged that ratings of record are completed within 60 days after the closing of the rating period.

(b) Human resources officers must ensure that ratings of record on these employees are entered into the automated human resources data system in accordance with instructions from the Human Resources Systems Analysis Group.

(2) Status Reports. Periodic status reports will be available through the automated data system.

**Retention.** Ratings of record for covered EOIR employees (and the performance plans on which they are based) will be filed in an Employee Performance File (EPF). Performance appraisals and performance plans are to be retained for a period of four years and will be forwarded along with the Official Personnel Folder (OPF) to a gaining agency upon an employee's transfer.

**7. GRIEVANCES ASSOCIATED WITH PERFORMANCE.** As a general rule, a performance standard is not grievable unless the employee or his/her representative asserts that the application of the standard constitutes a violation, misinterpretation or misapplication, of any law, rule, or regulation controlling such standard. Ratings of record of covered employees are grievable under the Department's grievance system, including negotiated grievance procedures as appropriate. The submission of a grievance need not, and should not, delay any proposed action stemming from unacceptable performance.

**Rating Increase.** When a rating is increased as the result of a successfully pursued grievance (or other proceeding), the amended rating shall be placed in the EPF in lieu of the contested rating.

**Adjustment to Administrative Actions.** Any administrative actions that were based on the original rating will be reconsidered, and insofar as possible under law and regulation, those actions will be adjusted to conform to the amended rating.

**8. VALIDITY OF RATINGS.** Each rating of record issued within a component of the Department (or other agency which is subject to the performance appraisal requirements of 5 U.S.C. Chapter 43) supersedes the previous one and is considered to be the valid rating of record for pay and other human resources-related purposes. Furthermore, when a new employee covered by this Program enters on duty with EOIR at any time during the appraisal period, the current rating of record (if one exists) must be transferred as part of the OPF. The rating of record from the most recent performance cycle in the former agency will be recognized as the official rating of record until it is superseded by a rating of record issued under this Program.

## **9. ACTIONS BASED ON LESS THAN SUCCESSFUL PERFORMANCE.**

### **A. General.**

When an employee's performance falls below Successful (whether or not a formal appraisal has been given), good human resources practice suggests that this determination should trigger prompt action on the part of the supervisor to bring the employee's performance up to an acceptable level or, if warranted in the case when an employee is unacceptable in one or more critical elements, to begin steps leading to the placement of the employee in a job he or she can successfully perform. Exactly what steps should be taken depends on the circumstances of the case. Formal training, on-the-job training, counseling, and closer supervision are common approaches to below- par performance problems.

However, an organization has no justification for continuing to retain an employee whose performance is rated Unacceptable after attempts to improve the employee's performance or to place him/her in another position fail.

### **B. Unacceptable Performance.**

If at any time during the performance appraisal cycle a supervisor concludes that an employee's performance is not acceptable and would cause one or more performance elements to be evaluated at the "Unacceptable" level, the supervisor should consult EOIR's Labor and Employee Relations Staff, Office of General Counsel on the appropriate action to take.

### **C. Relationship to Within-Grade Increases (WGI)**

Consistent with the requirements of C.F.R., Part 531, Subpart D, a within-grade increase must be based on acceptable level of competence determination. To be considered at an acceptable level of competence, an employee must demonstrate performance at the "Successful" level. When an employee's performance is below the successful level prior to the employee's eligibility for the next within-grade increase, the Labor and Employee Relations Staff, Office of General Counsel, EOIR, will provide specific instructions to the supervisor regarding the procedures to document a negative WGI determination.



### **CHAPTER 3. MANAGING PERFORMANCE AND HIGHER LEVEL REVIEW OF PERFORMANCE PLANS AND PERFORMANCE RATINGS OF RECORD.**

**1. RATING DISTRIBUTIONS.** OPM regulations prohibit the establishment of a forced distribution of levels of ratings for employees. However, rating officials and reviewing officials should review performance standards and ratings (or the distribution of ratings as appropriate) for difficulty and strictness of application to ensure that only those employees whose performance substantially exceeds normal expectations are rated at levels above Successful and that pay decisions based on the ratings comply with the funding provisions of the law and OPM regulation.

**2. HIGHER LEVEL REVIEW OF PERFORMANCE PLANS.** This program requires that all performance plans be reviewed and approved by an official at a higher level in the organization than the rating official at the beginning of the appraisal period and at any other time during the appraisal cycle when changes to the performance plans are deemed warranted. This review is to ensure appropriate levels of quality and difficulty of performance standards within each performance plan, and consistency in required levels of performance in performance plans across the organization.

#### **3. HIGHER LEVEL REVIEW OF PERFORMANCE RATINGS OF RECORD.**

Ratings of record must be reviewed and approved by a person(s) at a higher level in the organization than the rating official. **RATINGS OF RECORD MAY NOT BE COMMUNICATED TO EMPLOYEES PRIOR TO APPROVAL BY THE FINAL REVIEWER.** The reviewing official is normally the next higher official in the supervisory chain; however, a higher official may serve as the reviewing official. A copy of the employee's performance plan **MUST** be provided for consideration along with the rating. As warranted, tentative ratings of record forwarded for review and approval may be accompanied by recommendations as to pay, awards, retention, reassignment, or other applicable human resources action. Any such recommendation must be supported by the overall rating level assigned. The reviewing official has the authority to approve or adjust any tentative rating of record forwarded and the decision of the reviewing official is final.

## **APPENDIX 1. IDENTIFICATION AND DOCUMENTATION OF JOB ELEMENTS AND PERFORMANCE STANDARDS.**

### **1. GENERAL.**

EOIR components are permitted great discretion in approach. While many operational details associated with the performance appraisal process are mandated in this program for administrative or operational efficiency, great discretion is available to EOIR components in designing the approach to be used to identify critical and noncritical elements and job-related performance standards.

(1) No one method for identifying major job elements and performance standards is superior to all others. Consequently an eclectic approach that combines various techniques is recommended.

(2) In an effort to provide administrative and operational simplicity to the appraisal process for both employees and rating officials, a model system which may be applied with minor modification across the spectrum of positions found in EOIR is encouraged. However, components may use substantially different approaches if they consider them more appropriate for their needs.

(3) Although employees and supervisors are encouraged to jointly develop the elements and standards of an employee's position (with ultimate responsibility resting with the supervisor), there is nothing in this program that precludes the development and identification of at least some across the board (common) elements and standards at headquarters or local levels. Among the factors which should influence this decision are:

- (a) The number of occupational categories common across EOIR sub-components and units, the number of employees in the categories, and the degree to which these employees are, in fact, performing essentially the same duties and responsibilities.
- (b) The degree to which responsibility for performance appraisal is to be decentralized.
- (c) The availability of staff resources.

(4) Another option components may wish to consider is the development of basic core performance standards which can be supplemented as needed by local units and/or rating officials.

**2. EOIR Model Provides a Suggested Approach.** The following model represents a viable approach for identifying critical and, if desired, noncritical job elements and for developing the performance standards for those elements. It is essentially a Job Analysis oriented approach, but also embodies characteristics of other approaches. With minor modification, this model can be applied to any position or groups of positions at all grade ranges in an organization.

### **EOIR MODEL.**

**Determination of Job Elements.** The most important requirements of an employee's position must be identified and formally recorded in writing on the employee's performance plan.

(1) Analysis of DOJ and EOIR Strategic Plans and Major Organizational Goals and Objectives. Elements may be identified upon analysis of any major organizational goals and objectives which have been established for a particular unit in which the position is located, and any specific expectations imposed upon the employee by the immediate supervisor (or other management officials in the supervisory chain).

Examples of such goals and objectives are:

-finding and eliminating the cause of a morale problem affecting the unit's productivity; or,

-establishing a new training program for the unit which ensures full knowledge and understanding of the provisions of a new law.

(2) Analysis of Position Description. As a step in identifying the job elements of a position, the position description should be analyzed to see what is to be accomplished by the employee. Because the position description serves as a main source document in this approach, it is essential that it be accurate and clearly reflect the current tasks and responsibilities of the employee's position.

(a) List the job tasks using an action verb and object.

(b) Group the tasks which have a common purpose or result.

(c) Label (name) these groups--they are the job elements.

(d) Some of these job elements will be considered so critical that inadequate performance of them will outweigh acceptable or better performance in other aspects of the job. Critical elements **MUST** be included (and clearly identified) in an employee's performance plan; noncritical elements **MAY** be included.

**Development of Corresponding Performance Standards.** Specific performance standard(s) must then be developed for each identified job element. A performance standard is a statement of the expectations or requirements established by management for a job element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.

(1) Performance standards **MUST** be written at the Successful level; they **MAY** be written at additional levels.

(2) Component policies implementing this program can impose additional levels at which performance standards must be written.

(3) The absence of a written standard at a given rating level does not preclude the assignment of a rating at that level.

(4) The written standard(s) must contain enough specificity to clearly convey what is expected for Successful performance and to serve as a gauge for overall performance which falls short of or exceeds the Successful level.

(5) Employee performance plans are focused on achieving results, and the standards must be measurable, observable, and/or verifiable.

### **3. INTEGRATION OF THE MODEL APPROACH WITH OTHER TECHNIQUES.**

The model may be used as the basic approach for all the performance management needs of a component. However, it may also be used in conjunction with other basic models (Strategic Planning, Balanced Score Card, etc.) as one of several approaches to the full range of performance management needs in a component.

### **4. EMPLOYEE PARTICIPATION AND DOCUMENTATION.**

Joint participation by the supervisor and the employee is encouraged in the development of the elements of the position and the standards against which employee performance will be measured. Standards mutually developed by the supervisor and the employee will be more objective and realistic and more likely to be measurable and quantifiable. Examples of joint participation are:

- (1) The employee and the supervisor discuss and develop the elements and standards together.
- (2) The employee provides a draft performance plan to the supervisor.
- (3) The employee comments on a draft performance plan prepared by the supervisor.
- (4) A group of employees occupying similar positions prepare a plan with supervisory approval.

**Final Authority.** Final authority for establishing the performance plan rests with the supervisor.

**Formal Record and Documentation.** Critical elements and their respective performance standards must be formally recorded in writing on the performance plan. This formal record clarifies expectations and provides written documentation that performance standards were actually developed and communicated to the employee.

**5. REQUIRED HIGHER LEVEL REVIEW OF ALL PERFORMANCE PLANS.** All employees' performance plans must be reviewed and approved at the beginning of the appraisal period (and at any other time during the appraisal cycle when changes to the performance plans are deemed warranted) by a person at a higher level in the organization than the rating official to ensure:

- Appropriate levels of quality and difficulty of performance standards within each employee's performance plan; and
- Consistency in required levels of performance in plans across the organization.

Executive Office for Immigration Review

**DISCLOSURE STATEMENT:** This information is personal. It must be appropriately safeguarded from improper disclosure and it should only be made available for review by appropriate management levels having a need to know.

**PART A.**

Name of Employee:

SSN:

Organizational Unit:

Position Title:

Pay Plan, Series, Grade:

Rating Period (from/to):

**PART B. ACKNOWLEDGMENT OF DEVELOPMENT, DISCUSSION AND APPROVAL OF PERFORMANCE PLAN**

|                      |                             |                                |
|----------------------|-----------------------------|--------------------------------|
| Employee's Signature | Rating Official's Signature | Reviewing Official's Signature |
| Date                 | Date                        | Date                           |

**PART C. PROGRESS REVIEW**

|                      |                             |      |
|----------------------|-----------------------------|------|
| Employee's Signature | Rating Official's Signature | Date |
|----------------------|-----------------------------|------|

**NOTE:** If the employee's performance falls below Successful on one or more elements at any time during the rating cycle, the supervisor should contact the Employee/Labor Relations Unit, Office of General Counsel, immediately.

**PART D. RATING OF RECORD OF INDIVIDUAL RATING ELEMENTS**

|   | Job Elements | Critical or Non-Critical | Weight (of critical element, if weighted*) | Final Rating |
|---|--------------|--------------------------|--|--------------|
| 1 |              |                          |  |              |
| 2 |              |                          |  |              |
| 3 |              |                          |  |              |
| 4 |              |                          |  |              |
| 5 |              |                          |  |              |
| 6 |              |                          |  |              |

\*If any of the critical elements are designated as carrying more importance than the other critical elements, the greater weight of the elements must be specified.

**PART E. OVERALL RATING OF RECORD**

|             |           |            |                        |              |
|-------------|-----------|------------|------------------------|--------------|
| Outstanding | Excellent | Successful | Minimally Satisfactory | Unacceptable |
|-------------|-----------|------------|------------------------|--------------|

**PART F. COMMENTS** Written comments should document with concrete examples the reasons for each individual element which is being assigned a rating level other than those which are described in the performance standards. In addition, comments must specifically address each element rated Minimally Satisfactory or Unacceptable. Comments must be supported by specific examples of performance that is deficient. Additional Sheets may be attached, if necessary.

Mid-Year Evaluation:

Final Evaluation:

**PART G. APPRAISAL TYPE:** ANNUAL \_\_\_ INTERIM \_\_\_

**PART H. HIGHER LEVEL REVIEW AND APPROVAL**

|                             |                                |                      |
|-----------------------------|--------------------------------|----------------------|
| Rating Official's Signature | Reviewing Official's Signature | Employee's Signature |
| Date                        | Date                           | Date                 |

**NOTE:** If you, as an employee, anticipate contesting any aspect of your rating, you are responsible for contacting your administrative or Employee/Labor Relations office immediately for specific procedures to be followed. Your signature on this form is simply an acknowledgment of receipt, and does not remove your right to file an appeal.

PERFORMANCE PLAN

Executive Office for Immigration Review

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JOB ELEMENTS AND STANDARDS

1. Job Element:

|                                     |          |                          |              |
|-------------------------------------|----------|--------------------------|--------------|
| <input checked="" type="checkbox"/> | Critical | <input type="checkbox"/> | Non-critical |
|-------------------------------------|----------|--------------------------|--------------|

Performance Standards:

EXCELLENT:

SUCCESSFUL:

MINIMALLY SATISFACTORY:

2. Job Element:

|                                     |          |                          |              |
|-------------------------------------|----------|--------------------------|--------------|
| <input checked="" type="checkbox"/> | Critical | <input type="checkbox"/> | Non-critical |
|-------------------------------------|----------|--------------------------|--------------|

Performance Standards:

EXCELLENT:

SUCCESSFUL:

MINIMALLY SATISFACTORY:

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

INSTRUCTIONS

PERFORMANCE PLAN, PROGRESS REVIEW RECORD, PERFORMANCE ACHIEVEMENTS,  
INDIVIDUAL ELEMENT RATINGS, AND EMPLOYEE APPRAISAL RECORD

I--PERFORMANCE PLAN

1. RESPONSIBILITIES:

- A. THE RATING OFFICIAL must develop or review the Performance Plan:
1. At the beginning of each appraisal period; and
  2. With participation by the employee; and
  3. Sign the front of the Performance Appraisal Record; and
  4. Obtain approval of the Performance plan by the Reviewing Official; and
  5. Provide a copy of the Performance plan to the employee.
- B. THE REVIEWING OFFICIAL must:
1. Review the Performance plan to ensure appropriate levels of quality and difficulty of performance standards within each Performance plan; and
  2. Ensure that required levels of performance are generally consistent between all the Performance plan's of employees for whom he/she serves as Reviewing Official; and
  3. Sign the front of the Performance Appraisal Record.
- C. THE EMPLOYEE must sign the front of the Performance Appraisal Record to acknowledge:  
Development and discussion of the Performance plan.

2. PROCEDURES. The Performance plan must meet the following requirements:

- A. Job elements must be written clearly, concisely and in sufficient detail to be meaningful; and
- B. The Performance plan must indicate whether an element is critical or noncritical (*a critical element is of sufficient importance that inadequate performance requires remedial action*); and
- C. If any of the critical elements are designated as carrying more weight or importance than the other critical elements, the greater weight of such elements must be specified in the Performance plan; and
- D. Performance standards must be written, as a minimum, at the Successful level for each job element.

II--PROGRESS REVIEW RECORD

1. PURPOSE. At least one formal progress review, normally a the mid-point of the rating cycle, must be conducted to:
- A. Determine if the elements and standards of the Performance plan remain appropriate; and
  - B. Discuss progress in terms of meeting the standards;
  - C. Identify any areas in which improvement is necessary to meet the Successful level.

II--PROGRESS REVIEW RECORD (continued)

2. PROCEDURES.

- A. At the conclusion of the progress review, the Rating Official and the employee will sign the Performance plan to indicate that the progress review was conducted; and
- B. If the job elements and standards remain appropriate and performance does not require remedial actions, no further formal action is required; HOWEVER,
- C. If the Performance plan is found to be in need of modification, the Rating Official will amend the Performance plan appropriately; and must obtain approval of the amendment by the Reviewing Official; and/or
- D. If the employee's performance requires remedial action, the Rating Official will take appropriate steps to include the initiation of formal action, pursuant to the procedures in the performance management policy issuances.

III--PERFORMANCE ACHIEVEMENTS AND  
INDIVIDUAL ELEMENT RATINGS

RESPONSIBILITIES:

THE RATING OFFICIAL must appraise the employee's performance on each critical (and, if appropriate, noncritical) element on which the employee has had a chance to perform by:

1. After reviewing his/her notes, briefly comparing each employee's achievements against the performance standards; and
2. Assigning individual element ratings to each of the elements. (See Part V, Rating Level Definitions, paragraph 1).
3. Using the space provided on the Performance Appraisal Record, preparing written comments for each individual element which is being assigned a rating level other than those which are described in the performance standards. Also, each individual element rated at the Minimally Satisfactory or Unacceptable level must be accompanied by written comments that document with concrete examples the reasons for the rating.

IV--EMPLOYEE APPRAISAL RECORD

1. RESPONSIBILITIES:

- A. THE RATING OFFICIAL must complete the appraisal record by:
1. Recording in concise language each element from the Performance plan onto the Employee Appraisal Record, indicating which elements are critical and weighted, if appropriate; and
  2. Transferring each element rating onto the Employee Appraisal Record; and
  3. Assigning an appropriate overall rating, taking into account the strengths and weaknesses of each individual element (see Part V, Rating Level Definitions, paragraph 2); and



#### IV-EMPLOYEE APPRAISAL RECORD (continued)

4. Signing the appraisal record; and
5. Obtaining review and approval of the rating by the reviewing official in the component. This review and approval must occur BEFORE communication of the final rating to the employee; and
7. Including any appropriate recommendation regarding pay, retention, reassignment, or other applicable personnel actions.

B. THE REVIEWING OFFICIAL must:

1. Approve or adjust the tentative rating forwarded; and
2. Sign the form and return it to the Rating Official for presentation and discussion with the employee.

C. THE RATING OFFICIAL MUST:

1. Discuss the final performance rating with the employee; and
2. Ask the employee to sign the Employee Appraisal Record.

D. THE EMPLOYEE SHOULD:

1. Sign the Employee Appraisal Record indicating the rating was discussed with him/her; and
2. Understand that such signature by him/her does not constitute agreement with the rating assigned, nor forfeit any rights to grieve the rating.

2. RECORDS:

- A. The employee must be given a copy of the signed Employee Appraisal Record; and
- B. A copy should be maintained in the Rating Official's office; and
- C. The original Performance Appraisal Record and any interim ratings used to arrive at the final rating, must be sent to the administrative or human resources office (as appropriate) for processing and retention.

#### V-RATING LEVEL DEFINITIONS

1. INDIVIDUAL ELEMENT RATING LEVELS. The rating assigned on each individual element of the job may be Outstanding, Excellent, Successful, Minimally Satisfactory, or Unacceptable.

- A. OUTSTANDING. Performance on an individual critical or noncritical element of the job which clearly demonstrates a level of achievement which exceeds to an exceptional degree the performance standards for Successful established at the beginning of, or modified during, the rating period. Performance at this level so exceeds what is normally required of the job that it is deserving of special recognition.
- B. EXCELLENT. Performance on an individual critical or noncritical element of the job which markedly exceeds the performance standards for Successful established at the beginning of, or modified during, the rating period.
- C. SUCCESSFUL. Performance on an individual critical or noncritical element of the job which completely meets, or exceeds to a limited degree, the performance standards for Successful established at the beginning of, or modified during, the rating period. Essentially, performance is right "on target."
- D. MINIMALLY SATISFACTORY. Performance on an individual critical or noncritical element of the job which just falls short of the performance standards for Successful established at the beginning of, or modified during, the rating period.

Performance at this level shows significant deficiencies that require correction.

- E. UNACCEPTABLE. Performance on an individual critical or noncritical element of the job which is substantially below the performance standards for Successful established at the beginning of, or modified during, the rating period. Usually, the employee's performance will show serious deficiencies in terms of quantity, quality, timeliness of work, or manner of performance.

2. OVERALL RATING LEVELS. The adjective used to describe the overall performance level of the employee taking into account both strengths and weaknesses on each individual job element. The overall rating level assigned may be Outstanding, Excellent, Successful, Minimally Satisfactory, or Unacceptable.

- A. OUTSTANDING. Overall performance in which the employee consistently performs in an exceptional manner with respect to established performance standards. In the Individual Element Ratings, the employee must demonstrate "Outstanding" performance in a majority of the critical elements of the position and demonstrate "Excellent" performance in all other critical elements of the position, and no Individual Performance Element may be less than "Successful."

- B. EXCELLENT. Overall performance in which the employee consistently performs in a manner which exceeds to a marked degree established performance standards. In the Individual Element Ratings, a majority of the critical elements must be rated "Excellent" or higher and no Individual Performance Element may be less than "Successful."

- C. SUCCESSFUL. Overall performance in which the employee consistently performs in a manner which meets or exceeds to a limited degree the established performance standards. In the Individual Element Ratings, a majority of the critical elements must be rated "Successful" or higher; no more than one critical element can be rated "Minimally Satisfactory"; and no Individual Performance Element may be less than "Minimally Satisfactory."

- D. MINIMALLY SATISFACTORY. Overall performance which is marginally acceptable. It is demonstrated by "Minimally Satisfactory" performance in more than one critical element of the position provided that no critical element has been rated "Unacceptable." Performance at this level is deficient in important aspects of the job and requires improvement.

- E. UNACCEPTABLE. Overall performance deemed to be unsatisfactory. In the Individual Element Ratings, performance in one or more critical elements has been rated "Unacceptable."

3. OVERALL RATING. In the event the critical elements are evenly divided between two rating levels, the rating official may select the more appropriate of the two levels (provided other applicable minimum requirements for the level selected are met). If all requirements of a level are not met, the next lower overall rating level must be assigned. Questions about the performance appraisal process should be directed to your administrative or human resources office, as appropriate.

# APPENDIX 4

|                            |                                       |
|----------------------------|---------------------------------------|
| <b>Human<br/>Resources</b> | <b>EOIR Administrative<br/>Manual</b> |
|----------------------------|---------------------------------------|

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To Human Resources Table of Contents

## Awards

|  |                               |                                       |
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| <b><u>Special Achievement Awards:</u></b><br>Sustained Superior Performance Awards,<br>Special Act Awards,<br>Quality Step Increases | <b><u>Time Off Awards</u></b> | <b><u>On-the-Spot Cash Awards</u></b> |
|--|-------------------------------|---------------------------------------|

### A. Special Achievement Awards

#### 1. Overview

Special Achievement Awards are designed to reward employee efforts in improving Government efficiency, effectiveness, and economy. Recognizing outstanding performance and achievements is an essential management responsibility critical to stimulating and sustaining high levels of proficiency and productivity.

#### 2. Criteria

##### a. Sustained Superior Performance Awards -

- A. Special Achievement Awards based on sustained superior performance can only be made on an individual basis;
- B. One or more important job elements must be performed for a period of at least six months in a manner which clearly exceeds normal requirements.
- C. The employee must not have received another cash performance award within the six months preceding the date of nomination. (Except that a special achievement award for a Special Act or Service during the six month period is not disqualifying.)
- D. A Special Achievement Award based on sustained superior performance may be



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supported by a current performance rating in which one or more critical elements have been rated "excellent" or higher, further written justification is not required. (A QSI is supportable only by a current overall performance rating of outstanding.)

- E. The amount of the award is determined by the grade level of the employee and the overall rating received (Excellent or Outstanding). Guidance for award amounts is reflected in the yearly Award amounts chart.

#### **b. Special Act or Service -**

- A. Special Achievement Awards for special acts or service may be granted to individuals or groups.
- B. These awards recognize special acts or events, or special service-type contributions of a one-time, non recurring nature. Examples include: short term performance which has involved overcoming unusual difficulties; creative or innovative efforts resulting in increased productivity, cost savings, efficiency of operations, or resolution of major problem(s); or exemplary or courageous handling of an emergency situation related to official employment.
- C. Award amounts are based on tangible savings, intangible benefits, or a combination of both. The award justifications should describe the tangible savings, or, for intangible benefits, should describe the value (ranging from minor change to major innovation) and extent of application (ranging from an application limited to an individual office or work method to broad application across the organization, or affecting the general public). In determining a group award, the contribution should be evaluated in the normal way and the amount divided among the group members, either equally or in proportion to the contribution of each member.

#### **B. Quality Step Increase -**

##### **1. Overview**

Quality Step Increases (QSIs) are faster-than-normal within-grade step increases granted to reward employees in General Schedule positions for outstanding performance. Because they provide a permanent increase to the rate of basic salary, QSIs are appropriate only to reward performance which is expected to continue into the future. QSIs are not appropriate when an employee has already been rewarded by means of a promotion or a performance award based in whole or in part upon essentially the same period of high level performance. By law (5 U.S.C. § 5336), a QSI may NOT be granted to an employee who has received a QSI within the preceding 52 calendar weeks.

The QSI is the equivalent of an additional within-grade increase (WGI) which permanently raises the employee's rate of basic pay, normally without changing the

employee's waiting period for the next regular WGI. (NOTE: A QSI does change the waiting period if the QSI moves the employee into the fourth or seventh step of his/her grade. This is because of the longer waiting period between steps 4 and 5 (two years) and steps 7 and 8 (three years), respectively.)

## 2. Criteria

- To be eligible for a QSI, an employee's current rating of record must be outstanding or level 5. In most performance programs, this means outstanding performance in the majority of critical elements of an employee's position. The recommending official must anticipate that the employee's performance will continue at this level into the future.
- A QSI may NOT be granted to an employee who has received a QSI within the preceding 52 consecutive calendar weeks.
- **RELATIONSHIP OF QUALITY WITHIN GRADE INCREASES TO PROMOTIONS.** Department policy indicates QSIs are not appropriate when an employee has already been rewarded by means of a promotion or a performance award based in whole or in part upon essentially the same period of high level performance.
- **RELATIONSHIP OF QSIs TO OTHER AWARDS.** This performance award consists of an additional within grade pay increase for General Schedule employees. Because the quality increase requires a considerably higher level of performance and the anticipation that it will continue, the monetary benefits to the employee are greater than those of a sustained superior performance award.
- **RELATIONSHIP OF QUALITY WITHIN GRADE INCREASES TO REGULAR WITHIN-GRADE INCREASES.** The QSI is reflected as an additional within-grade increase (WGI) which permanently raises the employee's rate of basic pay, normally without changing the employee's waiting period for the next regular WGI. (NOTE, however, that a QSI will affect the waiting period if the QSI moves the employee into the fourth or seventh step of his or her grade. This is due to the change in the length of the waiting period which occurs at these steps.)

## Procedures

The official supervisor generally initiates the recommendation for an award. Care must be taken by the recommending official to make sure the criteria and eligibility requirements are met prior to initiating a cash award for an employee. For awards which are based on sustained superior performance, i.e., for Special Achievement Awards for Sustained Superior Performance, or for Quality Step Increase Awards, supervisors may submit a recommendation sheet, and attach a copy of the performance appraisal which serves as the justification for the award.

The recommendation for a Special Act award should be in memorandum form (see

example), documenting the significant contribution, the type of award recommended, and, if monetary, the recommended amount of the award. (See the excerpt from DOJ Order 1451.1A for guidance in determining intangible benefits for determining the award amount.) This memorandum should be addressed to the official within the component to whom authority has been delegated to approve the award. Following approval by that official, it is submitted to the Human Resources Office for processing.

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## **B. Time-Off Awards**

### **1. Overview**

Time-off awards are intended to recognize superior accomplishments or other personal efforts that contribute to the quality, efficiency, or economy of Government operations. They are used principally to recognize contributions that are of a one-time, non-recurring nature, and may also be used to recognize sustained high level performance. However, if recognizing sustained high level performance, supervisors must ensure that time-off awards are not being used as a substitute for performance awards.

### **2. Criteria**

The following are the types of contributions an employee must make in order to be eligible for a time-off award:

- Making a high quality contribution involving a difficult or important project or assignment;
- Displaying special initiative and skill in completing an assignment or project before a deadline;
- Using initiative and creativity in making improvements in a product, activity, program, or service;
- Ensuring the mission of an organization is accomplished during a difficult period by successfully completing additional work or a project assignment while still maintaining one's own workload;
- Producing additional benefits to the Government as the result of especially effective and timely evaluation of an employee suggestion; and
- Sustained high level performance.

### **3. Eligibility**

Those who meet the definition of "employee" found in 5 U.S.C. 2105 are

eligible for time-off awards, with the exception of Presidential Appointees who are not subject to the Annual and Sick Leave Act and Administrative Law Judges. (Note: IJ and SL employees may not receive recognition based on performance of their adjudicatory functions.) A covered employee may be granted a time-off award regardless of his/her length of service with the Department, and the receipt of a prior cash, honor, or other incentive award is not disqualifying.

#### 4. Approval Levels

Each determination to grant a time-off award, including the amount of such award, shall be reviewed and approved by an official of the organization who is at a higher level than the official who made the initial nomination, unless there is no official at a higher level in the organization. In cases where the component head is the recommending official for a time-off award of more than one workday, the reviewing and deciding official shall be the Director, EOIR. (Please note, with respect to Senior Executive Service employees, Immigration Judges (IJ), and Senior Level (SL) employees, the authority to recommend time off Awards is reserved to the Director, EOIR; review and approval is retained by the Deputy Attorney General.)

#### 5. Supervisors and Managers

Supervisors and Managers are responsible for ensuring that employee requests for use of time-off awards are granted, denied, or canceled in an appropriate and consistent manner based solely on the operational needs of their respective organizations. The use of time-off awards must be planned and scheduled in order to avoid (to the greatest extent possible) forfeiture. Supervisors and Managers must also ensure that time-off award usage is properly documented and recorded.

#### 6. Amount of Award and Limitations

A full-time employee may be granted a maximum of 40 hours of time off from duty as an incentive award for any single contribution that meets the criteria. Time-off granted to an employee must be scheduled and used within one year after the award is made. However, supervisors should encourage employees to use the time-off within 120 calendar days after approval. The total amount of time-off a full-time employee may be granted during any one leave year is 120 hours. The maximum amount of time-off that can be granted during any one leave year to a part-time employee or employee with an uncommon tour of duty is the average number of hours of work in the

employee's biweekly scheduled tour of duty, and the maximum amount that can be granted for any single contribution is one-half of the total leave year maximum. The average number of hours of work in the biweekly scheduled tour of duty for such employees should be calculated, if possible, upon their work schedules during one year preceding the granting of the time-off award.

The minimum time-off award that can be granted is four hours, and time-off awards can only be used in increments of four hours or more, with the exception of ending balances of less than four hours -- which must be used in their entirety.

**If the total amount of time-off award is not used within one year after its approval, any unused time off is forfeited and is not eligible for restoration.** A time-off award cannot be converted to cash under any circumstances, and therefore cannot be converted to a lump-sum payment upon separation of an employee. A time-off award is not transferable to another Federal agency if an employee has unused time-off to his/her credit at the time of separation from the Department. Also, time-off cannot be re-credited to an employee's account if an employee separates and returns to the Department after a break in service of more than three calendar days. Time-off award balances are transferable between organizations of the Department. In such cases, the timekeeper's file must be furnished by the losing component to the gaining component within one pay period after the employee's transfer.

#### 7. Relationship to other Awards

The receipt of a time-off award is not disqualifying for the subsequent granting of any other cash or honorary incentive award and vice versa. However, the same contribution should not be used as the basis for a time-off award and another award, unless the time-off award or other award is deemed clearly not adequate to recognize the value of the employee's contribution. In such rare cases, it may be appropriate to couple a time-off award with a cash or honorary award.

Time-off awards should not be granted to employees in positions or organizations where the workload is so heavy or demanding that requests for approved absences are frequently denied or the absence of an employee could adversely affect efficient operations. The granting of monetary or honorary awards may be more appropriate in such circumstances. If monetary awards are granted in lieu of time-off awards for these reasons, the amount of the



monetary awards should equal the value of the time-off which would have been granted.

#### 8. Relationship to Leave Program

Time-off awards are not annual leave and are not subject to the general forfeiture rule which applies at the end of a leave year to annual leave in excess of an employee's annual leave ceiling. The use of time-off awards after a cancelled period of scheduled annual leave (unless the annual leave has been rescheduled and approved) shall be considered rescheduled and used annual leave, or as available time for annual leave usage.

Time-off awards to an employee's credit will affect an employee's eligibility to receive donated annual leave under the Department's Voluntary Leave Transfer Program (VLTP). Annual leave cannot be transferred to an approved leave recipient under the VLTP until his/her time-off award balance has been exhausted. Since time-off awards are not annual leave, time-off award balances cannot be transferred to approved leave recipients under the VLTP.

#### 9. Documentation Requirements

Time-off awards will be documented through the use of the "Time-Off Award Approval Form." The form is designed for use by: supervisors in recommending time-off awards; approving official; the Human Resources Office, EOIR, for eligibility review, data entry, and personnel record keeping purposes; and the award recipient's timekeeper for recording, by pay period, award hours used and remaining award hour balances.

Upon completion of Parts I and II (including action by approving official) the Time-Off Award Approval form must be submitted to the Human Resources Staff.

The Human Resources Staff will notify the approving official of the effective date of the award. The effective date will be the first day of the following pay period from receipt and approval by the Human Resources Staff on Part III of the award form. The effective date will be used as a suspense date for tracking the one-year period in which the time-off may be used. **Note:** If the Human Resources Staff finds that the employee is not eligible or the proposed award is otherwise deficient, the proposed award will be returned without action with a note of explanation.

"Time-off" shall be scheduled and approved before used. Usage of time-off without prior approval shall be considered absence without leave (AWOL). The award recipient shall request use of time-off by way of submitting a OPM-71, Request for Leave or Approved Absence. The leave slip should be annotated to clearly show that the absence is for "time-off" rather than annual leave.

#### 9. Recording and Reporting Requirements

The timekeeper should maintain a manual account of how many time-off hours have been awarded to an individual, how many have been taken, how many remain, etc., on the Time-Off Award Approval Form so that this information is readily available if requested by the employee, his or her supervisor, or the Human Resources Office. Further, when preparing the award recipient's Time and Attendance (T&A) each pay period, the timekeeper shall complete the T&A in the following fashion:

If the award recipient has 16 hours of "time-off" award hours approved, and the employee takes 4 hours, the T&A under both STAR and PC TARE should reflect 4.0 hours taken (in the appropriate weekly column) with a code of Prefix 61 and TC 66, with the remaining time for that day documented appropriately. If the timekeeper is recording T&A's via STAR it is imperative that he or she add the 16 hours of Time Off Award hours in the employee's Leave Account before any of those hours are charged to that employee. To do so, from Screen RA0001, the timekeeper must go to File, Time and Attendance maintenance, highlight the employee's name and go to Leave Account. The timekeeper must manually type in TOFF in the Detail section of that screen (toward the bottom of the screen) in the box next to the word 'TYPE'. Type in how many hours of Time-Off award hours the employee has been granted and click on 'ADD' to officially add those hours to the employee's balance. That procedure will now allow the timekeeper to properly document time-off award hours taken by using the instructions given above.

Unlike STAR, there is no need to place the number of "time-off" hours awarded to the employee anywhere in PC TARE prior to charging of those hours.

Questions on how to properly document an employee taking "time-off" hours may be directed to the STAR Coordinator (in EOIR's Human Resources Office), on 703-605-0373. Questions regarding the time-off awards program

may be directed to the Human Resources Staff, on 703-605-0377.

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## **C. On-The-Spot Cash Award**

### **1. Overview**

On-the-spot awards are "Special Act or Service" awards which are intended to promptly recognize one-time or short-term outstanding efforts by employees of a nature which might otherwise go unrecognized. They are designed to provide quick feedback and special recognition (with minimal documentation requirements) to employees who make extra efforts to perform duties or special assignments in an exemplary manner. If possible, on-the-spot awards should be granted within two weeks after the date of the special act or service.

### **2. Criteria**

The following are types of contributions an employee could make in order to be eligible for an on-the-spot award:

- o Making a high-quality contribution to a difficult or important project or assignment;
- o Producing exceptionally high quality work under a tight deadline;
- o Performing added or emergency assignments in addition to regular duties;
- o Demonstrating exceptional courtesy or responsiveness in dealing with the public, client agencies, or colleagues; and
- o Exercising extraordinary initiative or creativity in addressing a critical need or difficult problem.

### **3. Eligibility**

All employees who meet the definition of 5 U.S.C. 2105, with the exception of Presidential Appointees, members of the Senior Executive Service, Administrative Law Judges, Immigration Judges, and Senior Level employees, are eligible for on-the-spot awards. A covered employee may be granted an on-the-spot award regardless of his/her length of service with the Department, and the

receipt of prior cash, honor, or other incentive award is not disqualifying.

#### 4. Approval Levels

Each determination to grant an on-the-spot award, including the amount of such award, shall be reviewed and approved by an official of the organization who is at a higher level than the official who made the initial nomination, unless there is no official at a higher level in the organization.

#### 5. Amount of Award and Limitations

On-the-spot awards are based upon the nature and value of the special act or service and can be for net amounts of \$50 up to \$250 (in increments of \$50 only). When the employee's pay records are updated to reflect the award, withholding for deductions will be added to arrive at the gross amount for W-2 purposes. An employee cannot be granted more than four on-the-spot cash awards in a calendar year.

#### 6. Relationship to other Awards

On-the-spot awards are not intended to replace existing incentive and performance awards. The receipt of an on-the-spot award is not disqualifying for the subsequent granting of any other cash or honorary incentive award. However, the same contribution should not be used as the sole basis for an on-the-spot award and another award, unless the on-the-spot award is subsequently deemed clearly not adequate to recognize the value of the employee's contribution. In such rare cases, it may be appropriate to grant a subsequent cash or honorary award.

#### 7. Effective Date and Receipt of Awards

The effective date of the award will be the first day of the following pay period from receipt of approved On-The-Spot Award form by Human Resources. (For example, an approved On-The-Spot Award form received in pay period 10 will be effective in pay period 11.) Employees will receive the award payment through the National Finance Center (NFC) along with their salary payment and it will be reflected on their earnings and leave statement.

## 8. Documentation Requirements

An on-the-spot award must be supported by an On-the-Spot Award form which contains a short statement that indicates the employee's contribution met one of the criteria for the granting of this award and merits the amount of the money approved.

### Instructions for Completion of the Form:

**Part I:** Employee/Award Data -- of the On-the-Spot Award form is to be completed by the individual requesting the award, normally the employee's immediate supervisor. Note that an award justification must be attached to the form at this time. Approval Level -- of the form must be signed by the official to whom approval authority has been delegated. The approving official is responsible for assuring that the on-the-spot award criteria has been met and that the form is submitted to the Human Resources Staff.

**Part II:** Personnel Data -- of the form will be completed and the award will be processed by the Human Resources Staff.

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*Page last updated September, 2003.*