



# **National Agreement Between FNS and NTEU**

Effective Date: March 26, 2014

Termination Date: March 26, 2017



**Labor Management Relations for  
Headquarters, Northeast, Midwest,  
Mountain Plains, Southeast, Southwest  
& Western Regional Employees**

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## PREAMBLE

Whereas the Congress finds that experience in both private and public employment indicates that the statutory protection of the rights of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them safeguards the public interest, contributes to the effective conduct of public business, and facilitates and encourages the amicable settlement of disputes between employees and their Employers concerning conditions of employment and whereas the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the government, therefore, it is resolved that labor organizations and collective bargaining in the Federal Service are in the public interest.

The parties agree that pre-decisional involvement is mutually beneficial by providing an opportunity for input during the decision-making process, even on matters that are not considered negotiable under the Statute. The parties have committed to demonstrate goodwill toward one another and provide appropriate opportunities for pre-decisional involvement. Such opportunities do not supplant impact and implementation negotiations, where applicable.

## **ARTICLE 1**

### **RECOGNITION AND COVERAGE**

#### **Section 1.01. Exclusive Recognition**

The Food and Nutrition Service (FNS), Headquarters, the Midwest Region (MWR), Mountain Plains Region (MPR), Northeast Region (NER), Southeast Region (SER), Southwest Region (SWR), and Western Region (WR) offices, hereinafter known as the Employer, recognizes the National Treasury Employees Union (NTEU), hereinafter known as the Union, as the exclusive representative for the following employees:

#### **Section 1.02. Headquarters**

All professional and nonprofessional employees of the U.S. Department of Agriculture, Food and Nutrition Service (FNS) and Center for Nutrition Policy and Promotion (CNPP) which together comprise the Food, Nutrition and Consumer Services (FNCS), Headquarters, including employees of FNS Headquarters located outside the Park Office Center (POC) in offices throughout the United States and Puerto Rico, excluding all management officials, employees engaged in Federal personnel work in other than a purely clerical capacity, supervisors as defined in Title VII, Section 7112 of PL 95-454, Civil Service Reform Act of 1978, and employees described in 5 U.S.C. §7112(b)(2), (4), (6), and (7). The Parties recognize that in the administration of this National Agreement and any subsequent midterm agreements or memorandums of understanding entered into by the Parties, FNCS and FNS bargaining unit employees are synonymous and shall hereafter be referred to as FNS bargaining unit employees.

#### **Section 1.03. Northeast Region**

All professional and nonprofessional employees employed by the U.S. Department of Agriculture, Food and Nutrition Service, Northeast Region, excluding all stay-in-school employees, supervisors, management officials, and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6), and (7).

#### **Section 1.04. Midwest Region**

All professional and nonprofessional employees of the U.S. Department of Agriculture, Food and Nutrition Service, Midwest Region, Chicago, Illinois, excluding all management officials, supervisors, and employees described in 5 U.S.C. §7112(b)(2), (3), (4), (6), and (7).

#### **Section 1.05. Western Region**

All professional and nonprofessional employees of the U.S. Department of Agriculture, Food and Nutrition Service, Western Region, excluding all management officials, supervisors, and employees described in 5 U.S.C. §7112(b)(2), (3), (4), (6), and (7).

**Section 1.06. Southwest Region**

All professional and nonprofessional employees of the U.S. Department of Agriculture, Food and Nutrition Service, Southwest Region, Dallas, Texas, excluding all management officials, supervisors, and employees described in 5 U.S.C. §7112(b)(2), (3), (4), (6), and (7).

**Section 1.07. Southeast Region**

All professional and nonprofessional employees of the U.S. Department of Agriculture, Food and Nutrition Service, Southeast Region, excluding all management officials, supervisors, and employees described in 5 U.S.C. §7112(b)(2), (3), (4), (6), and (7).

**Section 1.08. Mountain Plains Region**

All professional and nonprofessional employees of the U.S. Department of Agriculture, Food and Nutrition Service, Mountain Plains Region, excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, confidential employees, management officials, supervisors, and employees described in 5 U.S.C. §7112(b)(2), (3), (4), (6), and (7).

## **ARTICLE 2**

### **PUBLISHED RULES AND REGULATIONS**

#### **Section 2.01. Governing Laws, Rules, and Regulations**

In the administration of all matters covered by this Agreement, the Union and the Employer will be governed by this Agreement, existing and future Employer rules, regulations and policies not in conflict with this Agreement, government-wide rules and regulations and/or Federal law. Where the terms of the Agreement conflict with Agency or Department rules and regulations effected after the effective date of this Agreement the terms of the Agreement shall be controlling.



**ARTICLE 3**  
**RIGHTS OF THE EMPLOYER**

**Section 3.01. Authority of the Employer**

- (1) In accordance with and subject to the Civil Service Reform Act of 1978, nothing shall affect the authority of the EMPLOYER:
- (a) To determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and in accordance with applicable laws;
  - (b) To hire, assign, direct, lay off, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
  - (c) To assign work, to make determinations with respect to contracting out, and to determine the personnel by which the agency operations shall be conducted;
  - (d) With respect to filling positions, to make selections for appointments from:
    - (i) among properly ranked and certified candidates for promotion or;
    - (ii) any other appropriate source; and
  - (e) To take whatever actions may be necessary to carry out the Agency's mission during emergencies.

## **ARTICLE 4**

### **EMPLOYEE RIGHTS**

#### **Section 4.01. Recognition**

The Employer and the Union will recognize and respect the dignity of employees, supervisors and managers in the formulation and implementation of personnel policies, practices and conditions of employment and, at all times, treat employees with courtesy and respect. Relationships between employees and their supervisors will be mutually conducted in a businesslike, courteous and tactful manner.

#### **Section 4.02. Exercising Rights Under Agreement**

- (1) The initiation of a grievance in good faith by an employee will not cause any reflection on his/her standing with their supervisor or on the employee's loyalty or desirability to the organization. Employees who have relevant information concerning any matter for which remedial relief is available under this Agreement will, in seeking resolution of such matter, be assured freedom from restraint, interference, coercion, discrimination, intimidation or reprisal.
- (2) The Employer will not impose any restraint, interference, coercion or discrimination against any employees in the exercise of their right to designate a Union Steward for the purpose of representing to the Employer any matter of concern over the interpretation or application of this Agreement or of representing the employees to any Government agency or official other than the Employer. The parties recognize that this section grants such employees or stewards no official time for performing duties under provisions of this Agreement.

#### **Section 4.03. Right to Union Representation**

- (1) Any discussion with employees by representatives of the Employer which may reasonably be considered by an employee to lead to disciplinary action will be conducted in private. The employee, in such instance, has the right to have his/her Union representative at such meeting. If the employee requests representation, the Employer will delay the meeting long enough to permit the Union representative to attend.
- (2) If there is a disagreement between the employee and the Employer regarding the employee's right to Union representation, the meeting will be delayed to permit the Union representative to attend, or a separate meeting involving the Employer representative, employee and Union representative will be scheduled as soon as practicable.
- (3) The Parties recognize that the following meetings shall not normally lead to disciplinary action for the purpose of this Section:
  - (a) counseling employees; and

- (b) discussing performance evaluations and appraisals with employees.

#### **Section 4.04. Right to Written Instructions**

Consistent with the employee's responsibility to carry out instructions, an employee who, due to past experience or the nature of the present assignment, determines that he/she needs written clarification on a matter pertaining to the way in which work should be done, that employee may accurately reduce the supervisor's instructions to writing. The supervisor shall initial these written instructions if they accurately reflect the instructions given. If the written instructions do not accurately reflect the instructions given, the supervisor, at his/her option, will note the necessary corrections or ask the employee to redraft the original instructions and then initial.

#### **Section 4.05. Investigative "Weingarten" Meetings**

- (1) Employees shall have the right to have a Union representative present at any examination of any employee by a representative of the Employer in connection with an investigation if:

- (a) the employee reasonably believes that it may result in disciplinary action against the employee; and
  - (b) the employee requests representation.

- (2) At any meeting as referenced in Section 4.05(1) above, the Employer agrees:

- (a) to inform the employee in advance of the meeting, the general subject of the interview, including whether or not it is criminal in nature;
  - (b) that the interview will be scheduled to allow the employee an opportunity to seek the counsel of a Union representative and to prepare for the investigatory interview; and
  - (c) that the employee has the right to privately counsel with his/her representative during the investigatory interview before the employee must answer a particular question.

- (3) The Employer agrees to distribute annually to each bargaining unit employee, a notice advising each employee of the right to representation by NTEU if the employee reasonably believes an examination may result in disciplinary action and the employee requests representation.

#### **Section 4.06. Role of Union Representative**

- (1) When an employee being interviewed is accompanied by a Union representative, the role of the representative includes:
  - (a) Request that the interviewer clarify questions;
  - (b) Clarify the responses provided by the employee;
  - (c) Assist the employee in providing favorable extenuating facts;
  - (d) Suggest other employees who may have knowledge of relevant facts;
  - (e) Advise the employee in the meeting or in a caucus;
  - (f) Raise relevant questions that may assist the employee in responding to the questions raised by the interviewer; and
  - (g) Raise questions that are reasonably related to the matter being discussed.
- (2) When a Union representative attends an investigative (Weingarten) interview, he/she agrees not to:
  - (a) Engage in conduct which is disruptive or precludes the Employer from conducting the investigation.

#### **Section 4.07. Use of Official Government Property**

All employees will be officially notified on an annual basis of the Employer's policies regarding the monitoring of employee use of official government property, including electronic equipment.

#### **Section 4.08. Freedom from Discrimination**

The Employer is committed to providing a work environment free of discrimination because of sexual preference or orientation.

#### **Section 4.09. Consultation with Union Benefits Counselor**

Upon request, employees will be authorized up to a maximum of one (1) hour of administrative leave annually, or at the employee's option may use their lunch period, to consult with a national Union-sponsored benefits counselor. Supervisors will approve such requests unless precluded by the employee's workload.

#### **Section 4.10. Right to Join or Assist Union**

- (1) Each employee shall have the right to join or assist the Union freely without fear of penalty of reprisal, and each employee shall be protected in the exercise of such rights. Except as otherwise provided in law and this Agreement, such rights include the following:

- (a) The right to act for the Union in the capacity of a representative;
- (b) The right, in that capacity, to present the views of the Union to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and
- (c) The right to engage in collective bargaining with respect to the conditions of employment through representatives of the Union.

#### **Section 4.11. Voluntary Union Participation**

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

#### **Section 4.12. Voluntary Contributions**

Employee participation in the Combined Federal Campaign, blood drives, and other solicitations will be voluntary. Encouragement to participate will be directed to all employees subject to the solicitation. An immediate supervisor may not collect pledges or contributions from an employee under his/her supervision.

#### **Section 4.13. Off-Duty Conduct**

An employee's off-premises conduct during off-duty hours which does not interfere with or adversely impact the employee's ability to perform the duties of the position will not adversely impact the employee's performance evaluation and/or appraisal.

## **ARTICLE 5**

### **UNION RIGHTS**

#### **Section 5.01. Recognition**

The Union shall be the instrument through which employees participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment, as prescribed by Title VII of the Civil Service Reform Act of 1978. The Employer recognizes the Union's rights and agrees to deal with the Union's representatives on such matters. The Union may refuse to represent employees in proposed disciplinary actions, in statutory appeals (for example, adverse actions, unacceptable performance actions, equal employment opportunity complaints) and in any other matters permitted by law.

#### **Section 5.02. Right to Negotiate Changes in Personnel Policies, Practices, and Matters Affecting Employees' Working Conditions**

The Union has the right to negotiate with management, in good faith, with respect to changes in personnel policies and practices, and matters affecting working conditions.

#### **Section 5.03. Formal Meetings**

The Union will be given the opportunity to be represented at formal meetings between the Employer and employees concerning grievances, changes in personnel policies and practices, or other matters that affect working conditions of employees in the unit. Absent extenuating circumstances, the Union President or designee will be given two (2) work days notice of any formal meeting that is to be held and the topics to be discussed. The Employer will permit the Union representative to participate in an orderly manner, to ask questions, and to present a brief statement before the end of the meeting outlining the Union's position concerning the issues. The Employer retains the sole authority to summarize and terminate the meeting.

#### **Section 5.04. Right to Represent Employees Without Restraint, Interference, Coercion, or Discrimination**

The Employer shall not restrain, interfere with, coerce, or discriminate against designated representatives of the Union in the exercise of their responsibilities as representatives for the purpose of collective bargaining, processing grievances, or acting in accordance with applicable regulations and agreements on behalf of an employee or group of employees within the bargaining unit.

#### **Section 5.05. Employer Access to Union Constitution and By-Laws**

The Union shall furnish a current copy of its constitution and by-laws, a roster of its officers, and a list of local officers and their mailing addresses to the Employer and notify the Employer of any changes within ten (10) calendar days.

### **Section 5.06. New Hires in Bargaining Unit Positions**

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

### **Section 5.07. Orientation of New Bargaining Unit Employees**

The Employer will inform each local Chapter of the time and place of the initial orientation of new bargaining unit employees. A representative of the local Chapter will be allowed to participate in this orientation to inform the employee(s) of the Union's exclusive recognition status and to provide the employee(s) with literature as determined by the local Chapter. In addition, at the conclusion of the orientation session, the local Chapter will be afforded twenty (20) minutes to meet with the new employee(s) without management present. The local Chapter shall be given at least five (5) workdays advance notice of these orientation sessions. If no orientation sessions are held, the local Chapter will be given at least thirty (30) minutes to meet with new employees, without management present.

### **Section 5.08. Briefing on Term Agreement**

Each local Chapter shall be granted up to three (3) hours of official time to brief bargaining unit employees, without managers present, on the contents of the term agreement.

### **Section 5.09. Union Access to Information Regarding Changes in Personnel Policies, Practices, Conditions of Employment, and/or New Rules or Regulations**

Each Union Chapter will have access to a copy of all changes and/or new rules or regulations and any other written issuances concerning personnel policies, practices and conditions of employment in a timely manner, including all USDA and FNCS written issuances, updates and amendments as they are received by the Employer.

### **Section 5.10. Information Regarding Details and Temporary Promotions**

Upon request the employer shall provide a pre-formatted report in a spreadsheet format which will contain the following information about each Bargaining Unit Employee:

- (1) Last name, First name, MI;
- (2) Title;
- (3) Entrance on Duty (EOD) Date;
- (4) Series;
- (5) Pay Plan;
- (6) Grade;
- (7) Step;
- (8) Pay Locality Area;
- (9) Work Unit;
- (10) Work Division;

- (11) BUS Code;
- (12) Nature of Action;
- (13) Effective Date of Nature of Action;
- (14) Agency Building Street Address (Duty Address);
- (15) Agency Building City Location (Duty City);
- (16) Agency Building State Location (Duty State);
- (17) Agency Building Zip Code;
- (18) Agency Telephone Number;
- (19) Service Computation Date (SCD);
- (20) Tenure Group;
- (21) Work Schedule (full-time, part-time, or intermittent);
- (22) FLSA Status; and
- (23) Not to Exceed Date of Detail/Temporary Promotion.



## **ARTICLE 6**

### **UNION REPRESENTATION AND OFFICIAL TIME**

#### **Section 6.01. Official Time. Union Stewards.**

- (1) Official time shall be granted in accordance with Article 6, to employees who are representatives of the Union, who have been designated in writing and who are otherwise in a duty status, to accomplish the specified functions as set forth herein.
- (2) Union representatives are permitted to perform representational duties while on official time in an approved telework status.
- (3) The Union may designate up to fifteen (15) stewards for each local chapter. Stewards may represent any organizational segment within their office. The Union will provide the Employer with a roster of the names of stewards appointed pursuant to this section. One steward per chapter will be designated as a chief steward. Nothing in this section will preclude an NTEU national representative from representing the Union or an employee.
- (4) For each of the meetings with the Employer described in Section 6.02 below, the number of Union representatives entitled to official time is equal to the number of Employer representatives at such meetings, not to exceed two (2), except for Section 6.02 g and q.
- (5) The parties acknowledge that there exists a past practice whereby the Chapter President of NTEU Chapter 226 works 100% official time. The Chapter President of NTEU Chapter 226 may continue to work 100% official time, or may vary the amount of official time worked so that other Union designated officials may work a portion of the 100% official time hours dedicated to Chapter President of NTEU Chapter 226. This provision will have no effect upon the amount of official time afforded other Union officials of Chapter 226 which will continue to be reasonable time in accordance with the provisions of this Article.

#### **Section 6.02. Union Representational Functions Warranting Approval of a Reasonable Amount of Official Time**

- (1) Union representatives will be granted a reasonable amount of official time in accordance with Section 6.05 to:
  - (a) present grievances at any step of the Negotiated Grievance Procedure;
  - (b) represent an employee or the Union at an arbitration hearing;
  - (c) appear as a witness at any step of a grievance;
  - (d) appear as a witness at any arbitration hearing;
  - (e) meet and confer with management;
  - (f) prepare for and represent an employee or the Union in appeal hearings covered by regulatory or statutory procedures, (e.g., EEOC, MSPB, FLRA);
  - (g) attend meetings or committees on which Union representatives have authorized membership;

- (h) represent the Union in formal meetings involving personnel policies, practices, working conditions, or grievances between bargaining unit employees and management, or any other matters covered by 5 U.S.C. § 7114 (a)(2)(A);
- (i) represent employees in investigatory interviews if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee requests representation;
- (j) prepare for meetings scheduled with management;
- (k) assist employees when designated as their representatives in preparing and presenting a response to a proposed disciplinary, adverse or unacceptable performance action;
- (l) prepare responses to management-initiated correspondence;
- (m) prepare employee and Union grievances and appeals;
- (n) prepare for arbitration;
- (o) attend meetings for the purpose of presenting replies to proposed termination of probationary employees;
- (p) participate in training designed primarily to further the interest of government by bettering the labor-management relationship, (e.g., national and local Union training sessions) in accordance with Section 6.06;
- (q) prepare and negotiate with the Employer, including mediation and impasse proceedings;
- (r) confer with employees with respect to matters for which remedial relief may be sought pursuant to the terms of this Agreement;
- (s) meet with national or field staff representatives of the Union in connection with a grievance, arbitration or ULP charge;
- (t) prepare reconsideration statements and attend meetings in connection with the denial of within-grade increases; or
- (u) contact members of Congress and their staffs to discuss legislative and related matters affecting the Employer and its employees.
- (v) prepare for and participate in local Labor Management Relations Committee meetings or national Labor Management Forum meetings; or
- (w) engage in pre-decisional Involvement (PDI).

### **Section 6.03. Internal Union Business Precluding Granting Official Time**

Any activities performed by Union representatives relating to the internal business of the Union (including the solicitation of membership, election of officials, and collection of dues) shall be during the time the Union representatives are in non-duty status.

#### **Section 6.04. Excused Absence for Employees**

- (1) Employees who are otherwise in a duty status will be granted an Administratively Excused Absence to participate in the activities listed in Section 6.02 c, d, f, m, n, o, r, s and t.
- (2) In requesting release, the employee will follow the procedures delineated in Section 6.05. The Union will make every effort to ensure that employees do not use an unreasonable amount of excused absences.

#### **Section 6.05. Procedure for Use of Official Time and Excused Absences**

- (1) The following procedures shall apply to Union representatives and employees on official time, as authorized under this Agreement.
  - (a) Prior to using official time or an excused absence, the Union representative and the affected employee will seek supervisory approval and provide the supervisor or designee with an estimate of the time needed and the nature of the function (e.g., Section 6.02). Official time and/or an excused absence will be granted provided that their work requirements or work schedules do not prohibit release. If the supervisor is unable to grant the official time and/or excused absence when requested, the supervisor will advise the Union representative and/or employee of this and schedule an alternate time. The official time and/or excused absence will normally be scheduled within two (2) workdays.
  - (b) Official time will be recorded in WebTA or other electronic time and attendance system. Union representatives will make every effort to properly designate transaction codes 35, 36, 37, and 38. Requests and approvals or denials may be conveyed in person or by email, and should provide sufficient information to identify the purpose of the requested time.
  - (c) Upon entering a work area other than their own to meet with unit employees, Union representatives shall advise the immediate supervisor of their presence, the employee(s) to be contacted, and estimated duration.
  - (d) Upon return to their work area, Union representatives and employees shall advise their supervisors of their return.
  - (e) It is understood that exigent, unanticipated circumstances will occur where advance supervisor approval is not practicable. In those situations, the supervisor will be notified at the conclusion of the unanticipated circumstances and the time will be recorded as union time with post approval.

#### **Section 6.06. Official Time for Union Sponsored Training**

- (1) The Union shall submit requests for official time to the Personnel Officer or designee, normally at least one (1) work day prior to the scheduled training. Such requests must include the content and schedule of such training and the names of representatives whose attendance is desired.

- (2) The Parties recognize that the training of chapter officers, chief stewards, stewards and other chapter representatives is considered to be of mutual benefit to the Union and the Employer. Therefore, each chapter is granted 300 hours of official time for the training of such chapter representatives for each year of the contract and for each year that the contract is extended.

#### **Section 6.07. Official Time for Midterm Bargaining**

A number of bargaining unit employees equal to the number of the Employer's bargaining representatives (but not more than four (4) nor less than two (2) employees) will be granted official time to represent the Union in mid-term negotiations during the life of this Agreement.

#### **Section 6.08. Use of Official Time and Performance Assessment**

- (1) Union representatives will not be disadvantaged in the assessment of their performance based on their use of official time when conducting labor-management business authorized by this Article. However, it is understood that performance problems unrelated to the use of official time may be addressed in accordance with other relevant provisions of this Agreement.
- (2) The performance of Union representatives will be rated on the basis of pro-rated work time (i.e., the work performed on available work time after official time has been subtracted).
- (3) The Employer will consider reassigning work previously assigned to a Chapter President when it determines that the work cannot be timely performed due to their representational duties.

#### **Section 6.09. Official Time to Participate in Third Party Proceedings**

- (1) When serving as a designated employee representative in an established appeal procedure, Union representatives shall receive such official time as may be provided or allowed in the law or regulations governing the appeal procedure.
- (2) Union representatives and employees shall be granted official time, as determined by the Federal Labor Relations Authority, for participation on behalf of the Union in any phase of proceedings before the Authority during the time the representative or employee would otherwise be in duty status.

#### **Section 6.10. Official Time for Authorized Travel**

- (1) Where official time is available to employees and Union representatives under the terms of this Article, it shall include all necessary travel time.
- (2) The Parties recognize that RIB investigators generally work out of their homes and have little routine contact with their peers or their NTEU representatives over the course of a year. The Employer shall pay all necessary travel, lodging, and per diem expenses for a Chapter President or FNCS employee designated by NTEU, to be present at the area office RIB meetings where there is no RIB chapter leader or steward attending. Upon

request of the NTEU Chapter President of Chapter 226, the Employer shall pay all travel, lodging, and per diem expenses to attend the annual area office RIB meeting on a biennial basis.

## **ARTICLE 7**

### **USE OF OFFICIAL FACILITIES**

#### **Section 7.01. Meeting Space**

Upon advance notice by the Union, the Employer will provide meeting space, if available, for meetings, during or after hours. The Union will comply with all security and housekeeping rules.

#### **Section 7.02. Ballot Boxes**

Upon advance request by the Union, the Employer will provide space for the placement of ballot boxes being used in conjunction with chapter elections governed by local bylaws. The union acknowledges that no responsibility for the safety or security of the ballot boxes is assumed by the Employer.

#### **Section 7.03. Office Space and Furniture**

Each local Union Chapter will be provided an enclosed office space, large enough to accommodate a minimum of one desk and a small (no less than desk size) work table with four chairs. The Union will be provided with a minimum of one desk, four (4) chairs, one small (no less than desk size) table, one (1) metal 4-5 drawer lockable file cabinet, one telephone with long distance and speaker capability, one computer and printer. The Employer agrees to provide needed maintenance and repairs for this equipment.

#### **Section 7.04. Union Access to Government Equipment**

The Union will be granted reasonable access to photocopiers, LAN and electronic mail, TV/VCR, and facsimile, for official representational activities, not to include internal union business. The National Office of the Union will be granted access to the Employer's electronic mail system for the purpose of communicating with Chapter Presidents.

#### **Section 7.05. Bulletin Boards**

The Union will be entitled to the use of existing bulletin boards. The extent of use will be negotiated locally.

#### **Section 7.06. Mail Distribution**

- (1) The Union may distribute material in work areas provided the employee distributing the material is on non-work time and where distribution does not cause a disruption to the work flow in work areas.
- (2) The Union may use the Employer's internal and external mail system to distribute mail for official representational purposes. The use of the Employer's metered mail system is limited to \$200 for each local annually.

**Section 7.07. Posting and Distribution of Information by Union**

The Union agrees that information posted or distributed will not violate any law, regulation, this Agreement, or the security of the Employer or contain libelous material regarding the Employer or the Federal Government.

**Section 7.08. Access to Union Chapter President's Telephone Number**

The name and union office telephone number of the Union Chapter President shall be listed in the Employer's telephone directory.

**Section 7.09. Employee Access to NTEU Health Insurance Information**

Annually during the scheduled "open season" the Employer will make available to the employees a copy of the NTEU Health Insurance brochure. The Employer will allow a representative from the NTEU Health Plan to provide information on the plan during the "open season," as is allowed with other health care providers.

**Section 7.10. Use of Cafeterias or Other Non-Work Areas**

A Union representative, certified by the Union's National Office, upon advance notice, may visit the cafeterias or other non-work areas located on the Employer's premises to discuss appropriate Union business, including NTEU membership programs on non-work time.

**Section 7.11. Advance Notice of Relocations or Renovations**

The Employer agrees to notify the Union regarding any relocations or renovations prior to making any commitments to allow for bargaining as prescribed by applicable law.

**Section 7.12. Distribution of Contract**

- (1) A hard copy of this Agreement will be printed by the Employer and given to each current and new employee in the unit. Additionally, the Employer will electronically provide a copy of the Agreement to every employee.
- (2) The Employer will provide each local Chapter with one (1) copy of this Agreement on computer disks in a format that is compatible with the local Chapter's software. Employees will be permitted to place a copy of the contract on their computer hard drive or to use in disk format.

## **ARTICLE 8**

### **POSITION CLASSIFICATION**

#### **Section 8.01. Purpose of Position Descriptions**

- (1) The purpose of a position description is to describe officially, for pay and classification purposes, the predominant skills and duties particular to a position. A position description does not list every duty an employee may be assigned, but reflects those major duties which are regular and recurring, as well as, series and grade-controlling. The supervisor has final authority regarding assignment of work.
- (2) The Employer agrees that the position description will accurately reflect the actual duties of the employee. The work assignments of an employee may be changed provided such action does not prejudice an employee's classification appeal during the pendency of the appeal.
- (3) The Employer agrees that every effort will be made to properly classify all positions within a reasonable period of time and to place the position in the series which most appropriately reflects the responsibilities and duties performed by the employee.

#### **Section 8.02. Content of Position Description**

When the term "such other duties as assigned" or its equivalent is used in a position description, it is mutually understood to mean "tasks that are normally related to the position and are of an incidental nature." This does not preclude the Employer from assigning unrelated work to an employee on an irregular basis or when determined necessary.

#### **Section 8.03. Union Access to Employee Classification Standards**

- (1) The Employer will furnish the Union copies of proposed Office of Personnel Management classification standards for bargaining unit positions that are referred to the Employer for comment.
- (2) The Employer agrees to inform the Union as soon as possible of any reorganization and/or new or revised classification standards that will impact on bargaining unit employees.

#### **Section 8.04. Union Input on Changes to Employee Position Description**

- (1) The Employer agrees to consider the Union's written comments and suggestions when the Employer proposes changes or creates new position descriptions for bargaining unit employees. The employer will inform the Union of the results of the review in writing.
- (2) The Union may make recommendations regarding the accuracy of a standardized



position description where a unit employee's duties significantly differ from the position description. The Employer agrees to review the recommendations of the Union and advise the Union of the basis for its decision regarding the Union's recommendations.

#### **Section 8.05. Position Description Review. Classification Appeal.**

- (1) Each employee will be given a copy of their position description and will be permitted to discuss any disagreement or inaccuracy with their supervisor.
- (2) When differences concerning the accuracy of a position description cannot be resolved, the employee may request an evaluation or audit from the Human Resources Division. If the request is submitted in writing, the Employer's response will be in writing. The employee may make supplemental statements concerning the duties prior to or during the audit.
- (3) Should the employee disagree with the audit decision the employee may file a position classification appeal in accordance with government regulations.

#### **Section 8.06. Union Representation for Classification Appeals**

An employee who has filed a classification appeal with the employer in which the employee is represented by the union may have their Union representative present when their position is audited if they have requested a union representative prior to the audit. If a Union representative is present, they may not answer questions properly directed to the employee.

## **ARTICLE 9**

### **PERFORMANCE APPRAISAL**

#### **Section 9.01. General**

- (1) The provisions of the Article shall apply to all bargaining unit employees except those excluded by law or government-wide regulation.
- (2) Performance appraisals will be based on a comparison of the employee's performance with the performance elements and standards established for the twelve (12)-month appraisal period. For a particular performance appraisal, the Employer will only consider employee performance which falls within the established performance period.
- (3) Employees must perform under an established performance element for a minimum of ninety (90) days before receiving a final rating on that performance element.
- (4) Only a supervisor of record may rate a bargaining unit employee's performance. In the event that the employee's supervisor has supervised the employee for less than ninety (90) days, the employee's previous supervisor must prepare the employee's advisory rating on each critical element. The previous supervisor must submit a written advisory rating to the employee's current supervisor no more than thirty (30) days after the previous supervisor leaves. The current supervisor must consider this advisory rating in preparing the annual performance rating. An e-mail advisory rating is acceptable. A copy of the advisory rating must be provided to the employee, upon request.
- (5) The Employer will conduct all performance appraisals, as defined by this Article, in an objective and equitable manner. The Employer shall consider factors which are beyond the employee's control, and will not hold the employee responsible for such matters in conjunction with the rating process. The Employer shall not establish any pre-determined distribution of expected levels of performance (such as the requirement to rate on a bell curve).
- (6) When used in this Article, the following terms carry the same meaning as that established by the current 5 CFR §430.203:
  - (a) Critical Element: A work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. Such elements shall be used to measure performance only at the individual level.
  - (b) Non-Critical Element: A dimension or aspect of individual, team, or organizational performance, exclusive of a critical element, that is used in assigning a summary rating. Such elements may include, but are not limited to, objectives, goals, program plans, work plans, and other means of expressing expected performance.
  - (c) Performance Standards: The management-approved expression of the performance threshold(s), requirement(s), 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.

## **Section 9.02. Establishment of Performance Standards and Elements**

- (1) The Employer will ensure that performance elements and standards accurately reflect the employees' actual job duties and responsibilities.
- (2) Employees are encouraged to suggest elements and standards prior to and throughout the appraisal period. Employees should make all such suggestions to their supervisor of record.
- (3) The Employer will provide employees with proposed performance elements and standards at the beginning of the appraisal period, normally within thirty (30) calendar days but no later than sixty (60) days, of the start of the appraisal period. The Employer may carryover performance standards from the previous appraisal period into the next appraisal period. The employee will be responsible for achieving these standards upon written notice of this extension by the Employer.
- (4) An employee will have ten (10) calendar days after the receipt of the proposed elements and standards, including any performance elements and standards which have been carried over from the employee's previous performance plan, to submit oral and/or written comments on these elements and standards to his/her supervisor. The employee may seek the assistance of a Union representative in preparing his/her comments. Employees will be given a reasonable amount of work time to prepare any comments.
- (5) After considering the employee's comments, the Employer will develop the final performance elements and standards and provide them to the employee.
  - (a) Upon request, the Employer will meet with the employee when issuing the final performance elements and standards to discuss, in an attempt to avoid any subsequent misunderstanding about expected performance levels. The Employer will also identify which of the employee's recommendations, if any, were adopted, and will provide an explanation as to why specific recommendations were or were not adopted.
  - (b) Final authority for establishing performance elements and standards rests with the supervisory official.
- (6) The Employer will clearly define the performance required for an employee to achieve a "meets" and "exceeds" for each element of the performance plan. The Employer shall develop elements and performance standards so that an employee may achieve a "meets" and "exceeds" for each element, so long as the performance warrants such a rating.
- (7) The Employer will develop performance plans so that any employee may achieve a rating of "Superior" or "Outstanding" so long as the performance warrants such a rating. Ratings of "Superior" or "Outstanding" will not be contingent upon voluntary or "special" assignments. Voluntary or special assignments may, however, be taken into account in evaluating performance.
- (8) All performance elements and standards will be documented on Forms AD-435 A/B.
- (9) Employees may bring disputes concerning performance elements and/or performance standards to the attention of the Employer. The supervisor is authorized to change the disputed performance element and/or standard after discussion with the employee.
  - (a) The employee may seek the assistance of the Union in raising a dispute about performance elements and/or standards with a supervisor.

- (b) The Employer will grant the employee a reasonable amount of work time to prepare and present his/her dispute.
- (10) Both the employee and the Employer will sign and date Form AD-435 A/B to indicate that they are aware of the performance elements and standards, and to document any changes made to the performance elements and/or standards. Copies of the form will be maintained by both the supervisor and by the employee. The employee's signature on the form merely indicates that he/she has received a copy of the performance elements and standards and does not mean that the employee agrees with them. The employee and Employer will note, or reference, on Form AD-435 A/B any disagreements at the time the disputed performance elements or standards are established.
- (11) The Employer may develop generic performance elements and standards to cover positions for employees with the same series, grade, and level of reviewing official. The Employer will notify the Union whenever it plans to establish generic performance elements and/or standards, and will provide copies of the generic performance elements and/or-standards to the Union once finalized.

### **Section 9.03. Mid-year and Other Periodic Performance Reviews**

- (1) In the event the scope of the negotiations in this area is expanded by a change in the law, the Union or Employer may, at that time, assert rights as conferred by a change in the law.
- (2) Mid-year Reviews. The Employer will conduct one mid-year performance review. Mid-year reviews will be completed within forty-five (45) calendar days of the midpoint of the appraisal period (either before or after the midpoint), absent extenuating circumstances.
  - (a) The process of monitoring performance is ongoing. Supervisors are encouraged to periodically discuss performance, work product, and organization goals with their employees. At a minimum, during the mid-year review, a supervisor and employee shall discuss performance to date as it relates to each element in the performance plan. The supervisor will discuss how the employee may improve his/her performance, if necessary. Nothing in this section affects management's rights to terminate probationary employees, nor does it confer any grievance rights to/on probationary employees.
- (3) In the event that a supervisor determines during the mid-year review that no employees whom she/he supervises under the same performance plan can achieve a "meets" rating for an element or standard, the supervisor shall modify the element or standard for all employees under that performance plan so that a "meets" rating is achievable pursuant to Section 9.02(6).
  - (a) All Region and Headquarters program areas will certify, in writing, to the Agency's Human Resources Division Employee and Labor Relations Branch (ELRB) that all bargaining unit employees, listed by name, job title and grade, have received a midyear review or the reason why they have not.
  - (b) This report will be forwarded to ELRB within fifteen (15) calendar days of the end of the certification period, and copies of each Regional certification will also be provided to that Region's local union Chapter President. Headquarters Program Areas will provide their reports to the ERLR Branch, who will forward all reports and then provide copies to the local Chapter.

- (c) The employee may prepare additional documentation based on the mid-year review and submit it to the Employer. The Employer will have the option of concurring with the documentation, recording any disagreements, or simply recording that he/she is aware of the documentation without concurring or disagreeing.
- (4) At the end of the mid-year review meeting, the Employer and the employee will initial and date the Performance Plan, Progress Review and Appraisal Worksheet, or other approved form, to signify that the review was held and that both parties are aware of changes made, accomplishments recorded, and any discussions of unacceptable performance.
- (5) Employer may also conduct periodic performance reviews. Periodic performance reviews are intended to provide informal feedback on the employee's performance.
  - (a) Either the rating official or the employee may initiate a periodic performance review. Such performance review shall be scheduled to occur within ten (10) days of the request.
  - (b) In the event that a supervisor notices a decrease in performance from Fully Successful since the beginning of the performance rating period, the supervisor will notify the employee and conduct a review as soon as practicable, but no later than 30 days, to discuss how the employee can improve her/his performance. The review shall include advice or recommendations and provide additional coaching, monitoring, mentoring, and other developmental activities, as appropriate until the employee shows improvement. The Employer will send an e-mail to the employee following such review stating that the review took place.
  - (c) Periodic performance reviews should be used to ensure that critical elements, other elements, and performance standards are appropriate and current.
  - (d) During periodic performance reviews, supervisors will advise employees of their observations regarding current performance, provide feedback and discuss performance relative to the performance plan. A periodic review is not a performance rating.
- (6) The Employer will inform an employee and confirm in writing if the employee's performance does not meet a critical or non-critical element as soon as the supervisor determines that an employee's performance does not meet a critical or non-critical element. The employee will be advised that if their performance continues at the "Does Not Meet" level, it may result in the denial of a within-grade increase or action taken for unacceptable performance. Accordingly, counseling must take place when a supervisor notices the decrease in performance. This does not affect management's rights to terminate probationary employees, nor does it confer any grievance rights upon probationary employees.

#### **Section 9.04. End-of-Year Performance Review and Annual Performance Rating**

- (1) The Employer will issue an annual performance rating and conduct an end-of-year performance review within sixty (60) days of the end of the appraisal period.
  - (a) During the end-of-year performance review, the Employer will discuss the employee's overall performance rating and his/her performance on each element.
  - (b) At the end of the end-of-year performance review, the Employer and the employee will initial and date the Performance Plan, Progress Review and Appraisal

Worksheet, or other appropriate form, to signify that the review was held and that both parties are aware of changes made, accomplishments recorded, and any discussions of unacceptable performance.

- (c) In the event that a supervisor determines during the end-of-year performance review that no employees whom she/he supervises under the same performance plan can achieve a “meets” rating for an element, the supervisor shall annotate that element “not rated” for the performance period.
- (2) The Employer will provide the employee with any documentation which adversely affected the employee's annual performance rating, and the employee will have an opportunity to comment on such documentation.
  - (a) Where practicable, the Employer will provide the employee with any documentation prepared or received by the Employer which will have an adverse effect on his/her annual performance rating as soon as possible, but no later than ten (10) workdays of receipt or preparation.
  - (b) The employee should initial any document he/she receives, acknowledging only that the Employer has shown such documentation to the employee. If the employee refuses to initial the document, the Employer will instead note the refusal.
- (3) For employees under the Employer's supervision for only part of the appraisal period, the Employer shall also consider:
  - (a) Any summary performance appraisal, in written form, completed by the employee's previous manager (e-mail is acceptable). Any documented evidence of performance, as described in subsection (2) of this section, used to support the summary performance appraisal must be given by the previous supervisor to the current supervisor within thirty (30) days of the completion of the assignment. The current supervisor must keep this material on file with the employee's performance appraisal form and make it available to the employee in accordance with this section.
  - (b) When a rating of record cannot be prepared at the time specified in the plan, the 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.
- (4) In accordance with subsection 1 of this section, once an employee's performance rating has been finalized, the rating official will discuss the rating with the employee and ask the employee to sign and date the appraisal. By signing, the employee officially signifies only that the appraisal has been received, not necessarily agreement with the rating.
- (5) Informal Appeal Process. Employees may make written comments concerning any disagreement with an annual performance rating. Employees should submit these comments to the Reviewing Official (second-level Supervisor) within twenty (20) calendar days following receipt of the performance rating. The employee's comments will be attached to the appraisal form and will become part of the performance rating.
  - (a) The Reviewing Official will consider the comments and discuss the final rating with the rating official.
  - (b) If, after consideration, the Reviewing Official determines that the rating should be changed, he/she will notify the appropriate officials and the employee within fourteen (14) workdays following the receipt of the employee's comments.

- (c) If, after consideration, the Reviewing Official determines that the rating should not change, the Reviewing Official will inform the employee of his/her decision, along with the reasons for the decision, within fourteen (14) workdays of receipt of the comments. Upon the employee's request, the Reviewing Official will provide the decision and reasoning in writing.
  - (d) In preparing for this informal appeal process, the employee has the right to review and obtain copies of any relevant and/or necessary documentation. If the employee disagrees with the Reviewing Official's determination, the employee may proceed directly to Step Three of the Grievance procedures contained in Section 50.08 of this Agreement. Employee grievances regarding annual performance ratings are subject to the burdens established by Section 9.06 of this Article.
- (6) The final performance rating for the most recent performance period is the rating of record until replaced by another.

#### **Section 9.05. Employee Self-Assessment**

Employees are encouraged to provide their supervisors with lists of accomplishments at both the mid-year and the end-of-year performance reviews. These lists may include achievements, contributions, and information from other sources regarding the employee's performance (e.g., letters, e-mails) that the employee wishes to have considered. The employee may submit the materials up to fourteen (14) calendar days after the conclusion of the appraisal period. Employees will be allowed a reasonable amount of work time, not to exceed two (2) hours, to prepare such assessments.

#### **Section 9.06. Employee Grievances of Performance Ratings**

- (1) Employees may file grievances regarding their annual performance ratings, pursuant to Article 50 of this Agreement. If the employee exhausts the informal appeal process described in Section 9.04(5), above, the employee may proceed directly to Step Three of the grievance process. If an employee chooses not to use the informal appeal process, the grievance processing begins at Step One.
- (2) If an employee files a grievance regarding his/her performance rating of record, the following burdens apply:
  - (a) Where an employee challenges a rating of less than "Fully Successful" (e.g., "Does Not Meet," "Unsatisfactory," or "Less than Fully Successful") on the basis that he/she should have received a higher rating, not more than "Fully Successful," the burden is on the Employer to demonstrate by substantial evidence that the rating was proper.
  - (b) Where an employee challenges a rating on the basis that he/she should have been rated higher than "Fully Successful," the burden is on the employee to demonstrate that the rating was not proper.
- (3) In all cases involving performance appraisals, neither Party will have to prove that the other Party's action(s) were arbitrary or capricious in order to sustain its claim(s).
- (4) For the purposes of this Section, the time limit for Grievances begins to run when the employee receives the final decision from the Reviewing Official. Employees may elect to proceed directly to Step Three of the Grievance procedure in Section 50.08.

**Section 9.07. Release of Performance Information**

If an employee transfers or is reassigned, the Employer agrees to release only those documents pertaining to the employee's performance as required by law and regulation.

**Section 9.08. Opportunity to Improve Performance**

- (1) At the time the performance appraisal is issued, a written statement of how to improve performance shall be given to the employee within thirty (30) days for each critical and non-critical element rating of "Does Not Meet."
- (2) Upon request, the Employer will discuss with any employee how the employee may improve his/her performance. This may be orally or in writing, at the Employer's option.

**Section 9.09. Summary Ratings for Details**

The Employer must prepare an employee's summary rating for details and temporary assignments of ninety (90) days or longer. When an employee works under a different supervisor for ninety (90) days or longer, or changes positions for ninety (90) days or longer during the appraisal period, the interim supervisor must submit a written summary appraisal to the employee's current supervisor no more than thirty (30) days after completion of the assignment.

An e-mail summary rating is acceptable. The current supervisor must consider these appraisals in the annual performance appraisal ratings.

**Section 9.10. Negotiations for New Performance System**

If the Employer proposes a new performance system, it will provide the Union with notice and an opportunity to bargain in accordance with applicable law, rule and regulation.



## **ARTICLE 10**

### **ACTIONS FOR UNACCEPTABLE PERFORMANCE**

#### **Section 10.01. General**

The Employer, in taking any action based on unacceptable performance by an employee, will do so in a fair and objective way with particular attention given to avoiding disparate inequitable treatment of employees. The Employer will make every reasonable effort to assist the employee in improving deficient performance and will provide reasonable opportunity for the employee to correct performance problems before initiating any removal or demotion action.

#### **Section 10.02. Notice of Action for Unacceptable Performance**

- (1) Unacceptable performance is performance which does not meet established “Fully Successful” performance standards in one or more critical elements of the employee’s position. Notice of an action for unacceptable performance will include the following:
  - (a) An identification of the critical elements and performance standards for which performance is unacceptable;
  - (b) Advice as to what the employee must do to bring performance up to an acceptable level;
  - (c) A statement that the employee has ninety (90) days in which to bring performance up to an acceptable level;
  - (d) A description of what the Employer will do to assist the employee to improve the unacceptable performance during the opportunity period; and,
  - (e) A statement that unless the employee’s performance in the critical element(s) improves to and is sustained to an acceptable level, the employee may be reduced in grade or removed.
- (2) The Employer will consider reassigning and training the employee before taking action to remove the employee from his or her position.

#### **Section 10.03. Notice of Adverse Action**

- (1) An employee whose reduction in grade or removal is proposed under this Article is entitled to thirty (30) days advance notice of the proposed action. The notice should contain a statement that indicates:
  - (a) The action being proposed;
  - (b) The critical elements of the employee’s position on which the performance is considered unacceptable;
  - (c) The specific instances of unacceptable performance on which the present action is based;

- (d) The employee's right to be represented by an attorney or other representative;
  - (e) The employee's right to respond, orally or in writing, within fifteen (15) workdays;
  - (f) The name of the individual to whom the response shall be made;
  - (g) The employee's right to review the material relied upon to support the reasons in the notice;
  - (h) That the thirty (30) day notice period shall begin when the employee received the notice; and
  - (i) That a determination as to the reduction in grade or removal will be made after the expiration of the notice period.
- (2) Any request for an oral or written reply shall be submitted within five (5) workdays of the employee's receipt of the letter of proposed action.
- (3) In reaching a final decision, the Employer may not rely on any employee performance which the employee has not been given the opportunity to reply to either orally or in writing.

**Section 10.04. Timeliness of Decision to Retain, Reduce in Grade, or Remove. Notice of Action to Reduce in Grade or Remove.**

The decision to retain, reassign, reduce in grade, or remove the employee shall be made normally within thirty (30) days after the expiration of the notice period. The period may, if necessary, be extended for thirty (30) days. If the employee's performance substantially improves during the notice period and no action is to be taken, or if a determination is made that the employee shall be reduced in grade or removed, notification will be given to the employee. Notification of action to reduce in grade or remove shall include: the instances of unacceptable performance on which the action is based; the concurrence of a higher ranking official other than the official who proposed the action (unless proposed by the Head of the Agency); the effective date of the action, which shall normally be no sooner than two (2) weeks after the date of the decision. The action taken shall, in the case of a reduction in grade or removal, be based only on those instances of unacceptable performance by the employee which occurred during the one (1) year period ending on the date the advance notice was issued.

**Section 10.05. Right to Appeal**

- (1) Employees may appeal actions taken pursuant to the Article in accordance with established laws, rules and regulations by filing a grievance under the negotiated grievance procedure or filing an appeal with the Merit Systems Protection Board. The employee may not utilize both procedures but must elect one or the other in writing within the established time limits.
- (2) If the Union elects to appeal an unacceptable performance action to arbitration, the Union must give the Employer notice of its decision within twenty (20) workdays of the

employee's receipt of the Employer's final decision. The notice of appeal must be given by certified mail or by hand delivery to the appropriate deciding official. Notice of appeal by certified mail shall be effective when mailed and notice of appeal by hand delivery shall be effective when received.

#### **Section 10.06. Improvement in Employee Performance**

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

## **ARTICLE 11**

### **CAREER LADDER PROMOTIONS**

#### **Section 11.01. Criteria**

Career ladder promotions shall be dependent upon:

- (a) being minimally eligible to be promoted (after the last workday of the 52nd week in their positions or whatever lesser period satisfies the basic eligibility requirements);
- (b) a current rating of “Fully Successful” or higher at the current grade level; and
- (c) being capable of satisfactorily performing at the next higher level.

#### **Section 11.02. Effective Date**

Career ladder promotions will be made effective at the beginning of the first pay period after the employee becomes eligible. In addition, no employee may receive a career ladder promotion who has a rating below “Fully Successful” on a critical element that is also critical to performance at the next higher grade of the career ladder.

#### **Section 11.03. Denied/Delayed Promotion**

In the event that an employee is denied/delayed a career ladder promotion on the basis of Section 11.01 or Section 11.02, the employee, upon request, shall be provided, in writing, by the immediate supervisor the reasons for the employee’s promotion denial/delay, as well as feedback concerning what the employee can do to improve her/his chances of meeting the criteria in the future.

## **ARTICLE 12**

### **MERIT PROMOTION**

#### **Section 12.01. General**

The Employer will ensure fair consideration and merit selection for promotion. It is agreed that all promotions to bargaining unit positions and the placement actions as set forth below will be made using systematic and equitable procedures on the basis of merit, from among properly ranked and certified candidates or from other appropriate sources. However, nothing in this agreement will be construed as affecting the Employer's right to fill a vacancy, refrain from filling a vacancy, or to select from any appropriate source.

#### **Section 12.02. Objectives of Merit Promotion Process**

- (1) The objectives of the merit promotion process are:
  - (a) To bring the best qualified candidates to the attention of the Employer;
  - (b) To provide employees an opportunity to receive fair, equitable, and appropriate consideration for higher level positions;
  - (c) To provide an incentive for employees to improve their performance and develop their knowledge, skills, and abilities; and
  - (d) To provide qualified bargaining unit employees the opportunity for promotion.

#### **Section 12.03. Inclusion in Merit Promotion Process**

- (1) The Competitive Procedures set forth in this Article will apply to the following:
  - (a) Filling a position by promotion;
  - (b) Reassignment, reinstatement, transfer, or demotion to a position with more promotion potential than any position previously held on a permanent basis in the competitive service;
  - (c) Selection for temporary promotions or details to a higher graded position for more than one-hundred and twenty (120) days;
  - (d) Reinstatement to a permanent or temporary position at a higher grade than the grade last held in a non-temporary position in the competitive service;
  - (e) Transfer to a higher graded position; and
  - (f) Selection for training where eligibility for promotion depends on whether the employee has completed training.

#### **Section 12.04. Exclusion from Merit Promotion Process**

- (1) The Competitive Procedures set forth in this Article will not apply to the following:
  - (a) Promotions without current competition of an employee who was appointed in the competitive service from a Civil Service register, by direct hire, by non-competitive conversion, or under competitive promotion procedures, intended to prepare the employee for the position being filled (the intent must be made a matter of record, and career ladders must be documented in the promotional plan);

- (b) Promotions resulting from an employee's position being classified at a higher grade because of additional duties and responsibilities;
- (c) Reinstatement, transfer, promotion (including temporary or term), reassignment or change to a lower grade provided the position to be filled is at no higher grade than that previously held on a permanent basis under a career or career conditional appointment;
- (d) A position change or transfer from a position having known promotion potential to a position having no higher potential;
- (e) Reinstatement consistent with law and government-wide regulations;
- (f) A temporary promotion of one-hundred and twenty (120) days or less;
- (g) Details for one-hundred and twenty (120) days or less to a higher grade position or to a position with known promotion potential;
- (h) A promotion resulting from the upgrading of a position without significant change in duties and responsibilities due to issuance of a new classification standard or the correction of an initial classification error;
- (i) A position change permitted by reduction-in-force procedures in 5 CFR Part 351;
- (j) Promotion to a grade previously held on a permanent basis in the competitive service from which an employee was separated or demoted for other than performance or conduct reasons;
- (k) Selection for training in accordance with Article 18;
- (l) An action taken as a remedy for failure to receive proper consideration in a competitive promotion action.

#### **Section 12.05. 120 Day Time Limit for Temporary Promotions and Details**

- (1) Pursuant to 5 CFR §335.103 (c) (i) (ii), prior service during the preceding twelve (12) months under noncompetitive time-limited promotions and noncompetitive details to higher graded positions counts toward the one-hundred and twenty (120) day totals, referenced above.
- (2) 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.

#### **Section 12.06. Review of Internal and External Candidates**

- (1) The Employer recognizes that in its search for the best qualified applicants to fill positions, internal candidates (FNCS employees), are a valuable source, particularly when balancing recruitment needs against career development needs of current employees. Accordingly, the Parties agree that if the Employer decides to seek external candidates the Employer will run a merit promotion action for internal candidates prior to or simultaneously with running an action for external candidates (non-FNCS employees). The Employer agrees to first review the internal candidates generated by the merit promotion procedure for FNCS employees prior to considering the external candidates. This does not preclude the Employer from seeking applicants from other sources.

- (2) The Employer will provide the NTEU Chapter President with the name of an employee selected to fill a bargaining unit position and whether the employee is a bargaining unit or non-bargaining unit employee.
- (3) The parties agree that nothing herein shall preclude the Agency from seeking candidates from any appropriate source or from extending the area of consideration beyond the areas of consideration beyond the areas defined below:

All GS-13, GS-14 positions	Agency-wide
All GS-9, GS-11, GS-12 Headquarters positions	FNCS Headquarters-wide
All GS-9, GS-11, GS-12 Regional positions	FNCS Region-wide
All GS-8 positions and below	FNCS Local Commuting Area

- (4) The Employer will be able to limit the area of consideration to less than agency-wide if it determines that any the following conditions apply:
  - (a) Management determines that a sufficient number of well qualified applicants will be found within a more limited area of consideration;
  - (b) Budget or staffing allocations will not allow the valid consideration of applicants from other sources;
  - (c) New positions at higher grades are established in an organizational unit following a higher level directed reorganization and all the positions in the unit are encumbered; and
  - (d) Circumstances resulting from a reorganization or from other factors such as ceiling controls or hiring freezes that prevent the employing office from adding to the staff.
- (5) The existence of one or more of the following factors may justify extending the area of consideration beyond the areas defined above:
  - (a) The lack of sufficient number of well qualified applicants demonstrated by a pattern of previously advertised positions with the same or similar classification as the position in question.
  - (b) The lack of sufficient number of well qualified applicants with the negotiated area of consideration (i.e., as based on five (5) or fewer employees on board).
  - (c) A pattern of high turnover for the same or similar classification as the position in question.
  - (d) Requirement for specific experiences as identified by the knowledge, skills, and abilities in the job analysis and/or specific educational background as identified in the Qualification Standard for General Schedule positions.
- (6) The area of consideration cannot be changed once the vacancy announcement is open.

- (7) In the event that the Employer determines not to limit the area of consideration for internal candidates in a vacancy announcement, it shall provide reasons for that determination to the Union, upon request.

#### **Section 12.07. Time Limits for Posting Vacancy Announcements and Submitting Applications for Employment**

- (1) The Employer will post a vacancy announcement to cover all vacancies that must be filled in accordance with the procedures of this Article. The announcement will remain open and be posted on USAJOBS for a minimum of ten (10) work days. The announcement will also be posted by the Human Resources Division, or its service provider when one exists, on the Intranet for a minimum of ten (10) work days. The announcement may also be placed on one other bulletin board to be mutually agreed upon by the Parties.
- (2) Applications received on or before the closing date and time as stated in the vacancy announcement and in the manner stated in the vacancy announcement will be accepted.
- (3) At a minimum, the vacancy announcement will contain:
  - (a) Announcement number
  - (b) Opening and closing dates (an open continuous announcement will be indicated);
  - (c) Position title, series, and grade;
  - (d) Organizational location and duty station;
  - (e) Promotion and career ladder potential, if any;
  - (f) Area of consideration and whether applications will be accepted from outside of area of consideration;
  - (g) Principal duties, including the amount of travel;
  - (h) Qualification Standard for General Schedule Positions, or other qualification standards permitted by the OPM necessary for filling the position and any selective placement factors;
  - (i) Evaluation methods for vacant position;
  - (j) Procedures for applying;
  - (k) Statement of equal employment opportunity; and
  - (l) Number of positions expected to be filled if more than one position.
- (4) A copy of the bargaining unit vacancy announcements will be provided to the Chapter President or designee.

#### **Section 12.08. Information Submitted with Application for Employment**

- (1) All employees within the area of consideration will have the opportunity to be considered for promotion to positions for which they are eligible by submitting a complete and timely application, which includes all information and documentation required in the vacancy announcement.
- (2) Employees who will be temporarily absent from the workplace and wish to be considered for vacancies should make appropriate arrangements.



### **Section 12.09. Minimum Requirements**

- (1) The Employer agrees that selective placement factors will only be used when they are essential to the successful performance of the position. In such cases, they will constitute a part of the minimum requirements of the position and must be stated in writing with a copy of such going to the Merit Promotion file.
- (2) Applicants will be screened by the Human Resources Division, or its service provider if one exists, against basic eligibility requirements, time-in-grade restrictions, minimum qualifications, and any selective placement factors. Human Resources Division, or its service provider when one exists, will review all referable applicants against the minimum requirements.
- (3) If an employee has been determined “not qualified” following review of the application material, the employee may request reconsideration by providing a written request to the Human Resources Division, or its service provider if one exists, within three (3) workdays of the issuance of the determination. The request shall explain why the employee believes the determination was made in error and cite information in the original application material which supports reconsideration. No additional information may be submitted. The request will be assessed and the minimum qualifications will be reconsidered by the Employer. The employee will receive written notification of the outcome of the reconsideration as soon as practicable.

### **Section 12.10. Candidate Evaluation**

- (1) An automated staffing process shall be used. The automated system will assign a score based on applicants’ answers to the assessment questions. The applicant’s relevant education, training, experience, awards and accomplishments, as documented in her/his application package shall be considered. The rating and ranking process that the Employer uses will be in accordance with all laws, rules and regulations.
- (2) If the Employer decides that the applicant does not meet basic eligibility for the position because of lack of education, training, or specialized experience, the Employer will notify the employee in writing which basic eligibility requirement(s) were not met.
- (3) The applicant will be advised that she/he may submit a request for reconsideration within three (3) business days of receipt of the not qualified notification, identifying the material contained in the original application which she/he believes was not considered and is qualifying.
- (4) If the selecting official chooses to fill a unit position with an applicant who is not presently a federal employee, e.g., via an OPM appointment certificate, the selecting official will upon written request of any bargaining unit employee who was rated Best Qualified, but not selected, articulate in writing, with sufficient clarity, a nondiscriminatory, merit-based reason for the employee’s non-selection, within 5 business days of notification of non-selection. [this section effective May 13, 2015]
- (5) **[Subject to FLRA negotiability appeal]**
- (6) Upon request, the Employer will give the Union a copy of the documentation showing the 5 CFR Part 300 validation of the plan/guide, as well as any analysis of the impact of the plan/guide under the Uniform Guidelines on Employee Selection Procedures (1978): 43 Federal Register 38295 (August 25, 1978). All information that is collected in the application process will conform to 5 CFR Part 300. In addition, the Employer will

ensure that this process is consistent with and follows the guidelines outlined in Part 60-3, Uniform Guidelines on Employee Selection Procedures. [this section effective May 13, 2015]

#### **Section 12.11. Applicant Referral**

- (1) The best qualified candidates are those applicants who receive the highest scores in the evaluation process. Up to ten (10) candidates whose scores rank at the top of the group will be referred for each grade level announced to the Employer as best qualified in alphabetical order.
- (2) Each tied score must be counted as one of the ten (10) referred candidates or as the additional referral(s) as set out in paragraph (1) above. Tied scores may not increase the number referred unless the cut-off score is tied. In the latter situation, the number may be increased by the number of scores tied with the cut-off score.

#### **Section 12.12. Selection Process**

- (1) The selecting official has the right to select or not select from among the best qualified candidates identified by the competitive evaluation method. If only one or two candidates are best qualified, the selecting official may make a selection or request that the area of consideration be extended.
- (2) The selecting official is entitled to make the selection from any of the candidates on a selection certificate based on judgment of how well the candidates will perform in the particular job being filled. If one candidate is interviewed from the selection certificate, all must be interviewed. Any selection technique utilized by the selection official will be uniformly applied to all best qualified applicants referred to the selecting official.
- (3) The selecting official will make a decision to select or not select as soon as possible. Certificates expire fifteen (15) calendar days from issuance, but may be extended in 15-day increments up to ninety (90) days from the date of issuance. If the selection certificate cannot be returned in 90 days, the NTEU Chapter President will receive an explanation upon request.
- (4) The selecting official will make a selection consistent with merit promotion principles.
- (5) Upon request, the Employer will inform the applicants of the status of their application.
- (6) The Employer will provide a written justification to an applicant for her/his non-selection, upon request.

#### **Section 12.13. Effective Date of Promotion**

The effective date for a promotion will be the first day of the pay period in which the selectee assumes the duties of the position for which selected.

#### **Section 12.14. Career Guidance**

- (1) Upon request, employees identified by the Employer as not qualified for a vacancy are entitled to career guidance from the Human Resources. This guidance will include, at a minimum, a description of the minimum qualification requirements for the positions for which the employee desires consideration, an analysis of the employee's current qualifications as they relate to higher level positions the employee could reasonably be expected to fill within the next year, and areas in which the employee could improve to enhance the employee's future career opportunities.

- (2) Employees who meet the basic qualifications may request the following additional information from the Human Resources Division, or its service provider if one exists:
  - (a) Explanations of any part of the Merit Promotion Plan;
  - (b) Details of the evaluation techniques;
  - (c) The qualifications required for the position;
  - (d) If the employee was grouped among the best qualified;
  - (e) If the employee was minimally qualified for the position;
  - (f) The total points awarded on the assessment questionnaire in the automated staffing process;
  - (g) Minimum number for total points which were needed to make the best qualified list; and
  - (h) The name of the selectee.

#### **Section 12.15. Priority Consideration**

- (1) If as a result of a grievance being filed under this Agreement, either the Employer agrees or an arbitrator decides that an employee was improperly excluded from the best qualified list, he/she will receive priority consideration for the next appropriate vacancy for which he/she is qualified. An appropriate vacancy is one at the same grade level, in the same area of consideration, and which has comparable promotion opportunities as the position for which the employee missed proper consideration. Priority consideration means that the employee alone must be given bona fide consideration by the selecting official before any other candidates (except for the Repromotion Priority Placement Plan eligibles) are referred for the position to be filled. The employee is not to be considered in competition with other candidates and is not to be compared with other candidates.
- (2) In the event that two or more employees receive priority consideration for the same promotion action, they may be referred together. However, priority consideration for separate actions will be referred separately and in the order received based on the date the determination of missed consideration is made.
- (3) An employee who receives priority consideration may request the geographic area in which he/she wants to exercise priority consideration, provided the geographic area is within the original area of consideration.
- (4) Upon request, an employee with priority consideration will be provided written justification for the employee's non-selection.
- (5) An employee is entitled to retroactive pay in connection with an improper personnel action in accordance with 5 CFR §550.804(a) and other applicable laws, rules, or regulations.

#### **Section 12.16. Release of Evaluative Material to Union**

- (1) In the processing of grievances related to actions taken under the terms of this Article, the employee's representative will, upon request, be furnished the relevant evaluative material used in assessing the qualifications of the eligible candidates in regard to a grieved promotion action subject to the following criteria and conditions:

- (a) In order to safeguard the content of the assessment questionnaires used in the automated staffing process, in lieu of releasing this material, the Employer will arrange for it to be reviewed in the presence of an authorized official.
- (b) The aforementioned information may be sanitized to protect an individual's right to privacy.

**Section 12.17. Impact of Investigation on Consideration for Promotion**

The fact that an employee is the subject of a conduct investigation will not prevent or delay his/her proper consideration for promotion.

### **Section 12.18. Demotion Due to Inability to Perform at Required Level**

If an employee is promoted and subsequently within a year is demoted for inability to perform at the required level, the Employer agrees to make reasonable efforts to return the employee to his/her former or a like position.

### **Section 12.19. Use of Employee's Annual/Sick Leave Balance as Basis for Selection or Non-selection**

An employee's accumulation or balance of annual or sick leave shall not be considered by a promotion panel or used by the selecting official as a reason for selection or non-selection.

### **Section 12.20. Release of Merit Promotion Information to Union**

(1) Upon showing of a particularized need in a request from the Union, the following information will be provided within a reasonable period of time, which will be properly sanitized in accordance with the Privacy Act, to protect the privacy of the eligible candidates and panel members:

- (a) Announcement number;
- (b) Date certificate of eligibles was issued;
- (c) Number of vacancies;
- (d) Scores of the candidates referred;
- (e) The series, grade of the employees referred, and bargaining unit status;
- (f) The race, national origin, gender, and age of each outside applicant, to the extent collected;
- (g) Selection action;
- (h) Date of selection action;
- (i) Grade level determination; and
- (j) Date eligible for promotion (selectee).

### **Section 12.21. Retention of Promotion and Selection Information**

The Employer will maintain promotion and selection information for two (2) years in accordance with governing laws, rules and regulations.

### **Section 12.22. Hardship**

If a hardship exists preventing the employee from submitting an electronic application (e.g., extended absence such as medical leave, military service, compensable job related injury, etc.), the Employer may, on a case-by-case basis, consider other methods of applications. In such situations, the employee should contact Human Resources or the service provider, if one exists, for guidance and assistance with regards to submitting an application. The Employee must contact Human Resources or the service provider, if one exists, in advance of the closing date of the announcement and the application must be received by the closing date of the announcement. No extensions shall be granted.

## **ARTICLE 13**

### **DETAILS**

#### **Section 13.01. Definition**

A detail is defined as the temporary assignment of an employee to a different position for a temporary period. Details are intended to meet the temporary needs of the Employer's work, where applicable. The Employer will attempt to keep details within the shortest practicable time limits and to assure that the details are made according to requirements of the merit promotion plan.

#### **Section 13.02. General**

- (1) Selection for details will be accomplished in a fair and equitable manner.
- (2) Details will not be used as discipline and the Employer will give reasonable consideration to assertions by an employee that the detail will cause significant personal hardship.
- (3) A detail assignment lasting 30 days or less will not be posted. When the Employer determines that a detail assignment, lasting more than 30 days, is needed to correct a staffing imbalance or because of workload or training needs, and merit promotion competition does not apply; the Employer agrees to post the detail using the following procedures:
  - (a) The Employer will identify the position or positions to be detailed.
  - (b) The Employer shall seek volunteers via electronic media (e.g., e-mail) solicitation that shall include pertinent information regarding the detail opportunity such as the qualifications, the duties of the position, the expected duration and the organizational location.
  - (c) The Employer will solicit volunteers in the following order until the detail is filled:
    - (i) Local commuting area for either Headquarters or Regional Office (by program first, then among all programs);
    - (ii) Region-wide including Field Offices or Headquarters-wide, including RIB Offices and other out-stationed employees assigned to Headquarters (by program first, then among all programs); and
    - (iii) FNCS Nationwide (all Regions and programs).

The Employer reserves the right to begin the above process at any of the steps identified above. However, in such an event, the Employer must include the preceding step or steps. For example, should the Employer wish to start the solicitation process at Step 2, Region-wide including Field Offices, it must also simultaneously solicit all employees within Step 1, Regional Office local commuting area.

- (d) The Employer will consider all employees who have indicated an interest in the detail. In determining who will be detailed the Employer will consider the following factors:

- (i) Qualifications needed for an employee to satisfactorily perform in the position;
  - (ii) The skills and knowledge needed to effectively and efficiently accomplish the work;
  - (iii) Initial consideration given to location of employee;
  - (iv) Whether the employee has had a detail opportunity in the past twelve months; and
  - (v) Whether the employee can be spared from his/her position for the duration of the detail.
- (4) In cases of emergency, extreme hardship or exigent circumstances, the Employer may detail an employee without posting the affected position. Details which were not posted due to these reasons will be posted within 120 days according to the procedure in Section 13.02(3).
- (5) The Employer agrees to contemporaneously notify FNCS local chapter presidents of all detail solicitations at the time of posting and the employees ultimately selected for details that are within their jurisdiction. This will be accomplished at the local level and may be done electronically or by written notice. The notice shall include the following information:
- (a) The reason for the detail, except any reason that may violate privacy rights under subsection (4).
  - (b) The duration of the detail.

### **Section 13.03. Detail to Higher Graded Positions for more than 30 Consecutive Calendar Days**

- (1) It is agreed that an employee detailed to a higher graded position for more than thirty (30) consecutive calendar days will be temporarily promoted to that position effective with the beginning of the first full pay period following the 30th day of the detail, provided that the employee meets the appropriate qualification standards and time-in-grade requirements.
- (2) Details in excess of thirty (30) consecutive calendar days will be reported by the supervisor or other appropriate official to the Human Resources Division on Standard Form 52, "Request for Personnel Action" in accordance with applicable rules and regulations.
- (3) It is agreed that when an employee is detailed to a higher graded position for more than thirty (30) consecutive calendar days, but is not eligible for a temporary promotion, the employee's performance at an acceptable level of competence in a higher graded position will be cause for consideration for issuing a special achievement award to that employee.
- (4) When a detailed employee acquires eligibility for temporary promotion after the 30th day, but before the cessation of the detail, he or she will be temporarily promoted beginning the next full pay period after meeting applicable eligibility requirements.

### **Section 13.04. Detail to Higher Graded Position for More than 120 Days**

- (1) Any employee detailed or temporarily promoted for more than 120 days to a higher graded position or to a position with higher promotion potential must compete and be

selected under current laws. Prior service during the preceding 12 months under noncompetitive details to higher graded positions and noncompetitive temporary promotions counts toward the 120 day total.

- (2) If the Union believes that the Employer has violated the provisions of the Article it may exercise its grievance right under Article 50 on behalf of the employee(s).
- (3) **[Subject to FLRA negotiability appeal]**
- (4) The Employer shall waive time-in-grade requirements to the full extent of its authority<sup>1</sup>, consistent with applicable law and regulation, for any employee already assigned or detailed to a higher graded position when considering her or him for the temporary promotion. [this section effective May 13, 2015]

### **Section 13.05. Summary Appraisals for Details in Excess of 90 Days**

A supervisor shall prepare a summary performance appraisal for employees detailed in excess of ninety (90) days. The summary appraisal shall be used in accordance with this Agreement.

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<sup>1</sup> **5 CFR 300.603 (excerpted in relevant part) – Subpart F – Time-In-Grade Restrictions:**

(b) Exclusions. The following actions may be taken without regard to this subpart but must be consistent with all other applicable requirements, such as qualification standards:

(7) Advancement to avoid hardship to an agency or inequity to an employee in an individual meritorious case but only with the prior approval of the agency head or his or her designee. However, an employee may not be promoted more than three grades during any 52-week period on the basis of this paragraph.

(8) Advancement when OPM authorizes it to avoid hardship to an agency or inequity to an employee in individual meritorious situations not defined, but consistent with the definitions, in 5 CFR, Section 300.602 of this part.

#### **5 CFR 300.602 – Definitions:**

**Hardship to an agency involves** serious difficulty in filling a position, including when:

- (a) The situation to be redressed results from circumstances beyond the organization's control and otherwise would require extensive corrective action; or
- (b) A position at the next lower grade in the normal line of promotion does not exist and the resulting action is not a career ladder promotion; or
- (c) There is a shortage of candidates for the position to be filled.

**Inequity to an employee involves** situations where a position is upgraded without change in the employee's duties or responsibilities, or where discrimination or administrative error prevented an employee from reaching a higher grade.



## **ARTICLE 14**

### **REASSIGNMENTS**

#### **Section 14.01. General**

- (1) Pursuant to 5 CFR §210.102 (b)(12), a Reassignment is defined as “a change of an employee, while serving continuously within the same agency, from one position to another without promotion or demotion.” A reassignment is not a transfer-of-function personnel action which would include: (1) a change in duty station to a new geographic area; (2) mass transfer of position to a different agency; or (3) realignment of an employee and his/her position within their agency with no change to the impacted employee’s position, grade, or pay. The procedures set forth in this article only cover reassignments to vacant positions and do not apply to reassignments resulting from a classification change, disciplinary action, unacceptable performance, or merit promotion. However, in the event that the Employer reclassifies a position or revises classification standards, the Employer agrees to provide advance written notice to the Union and the local Chapter Presidents.
- (2) Consistent with the Employer’s right to assign work and determine the skills and qualifications necessary to perform a particular work assignment, is its right to reassign employees.
- (3) The Employer’s decision to reassign employees between positions or between work units will be a bona fide determination based on legitimate management considerations in the interest of the Employer.
- (4) Reassignments made in conjunction with disciplinary related actions will be made in accordance with appropriate due process requirements attached to applicable law, rule or regulation.

#### **Section 14.02. Reassignments Used for Cross-Training**

Reassignments may be used for cross-training; however, reassignments for the sole purpose of preparing an individual for a higher graded position must meet merit promotion principles.

#### **Section 14.03. Reassignment Procedures**

- (1) When the Employer determines that reassignment of an employee is necessary, the Employer agrees to use the following procedures:
  - (a) The Employer will send a courtesy notice of the Position Announcement to the Union two (2) days prior to issuance of the Announcement. The Announcement will include the following information:
    - (i) Qualifications needed for an employee to satisfactorily perform in the positions, and
    - (ii) The skills and knowledge needed to effectively and efficiently accomplish the work.
  - (b) The Employer may also consider employees who have expressed an interest in a reassignment due to hardship, and meet the requirements outlined in (a) (1) and (2). The Employer will not pay for employee expenses incurred as a result of any

hardship reassignment. The Employer will consider requests for hardship reassignments on a case-by-case basis. A hardship may include, but is not limited to, the following:

- (i) A serious medical condition affecting a member of an employee's immediate family, as defined in the Family Medical Leave Act;
    - (ii) Access to special education or a medical facility that is not available in the employee's current commuting area; and
    - (iii) The employee's spouse or life partner having military orders to relocate outside the employee's current commuting area.
  - (c) The Employer may consider for reassignment, employees who have expressed an interest in a reassignment due to personal circumstances, such as the employee's spouse or life partner accepting a job in a new location outside the employee's current commuting area.
- (2) The Employer will then solicit volunteers from among these employees to determine if anyone wishes to be voluntarily reassigned. If so, that employee will be reassigned. Volunteers will not be solicited if only one person possesses the qualifications and skills required for the position.
  - (3) If more than one individual volunteers, or if there are no volunteers, the Employer agrees to consider such factors as employees' experience, job performance, seniority, an employee's personal hardship which may result from the reassignment, and other relevant job qualifications in determining who will be reassigned. Any such reassignments will be made on a fair and equitable basis.
  - (4) When making an involuntary reassignment, the Employer agrees to first select from among qualified employees in the local area, prior to involuntarily reassigning an employee from another location.

#### **Section 14.04. Advance Notice of Reassignment**

- (1) The Employer agrees to give the employee who is going to be reassigned a ten (10) workday written notice and, when practical, a fifteen (15) workday written notice before effectuating the reassignment.
- (2) If the reassignment involves a change in duty station, the Employer agrees to give the employee a reasonable amount of time to accomplish the change in duty station in an orderly manner.

#### **Section 14.05. Compensation for Change in Duty Station**

If an involuntary reassignment involves a change in duty station outside of an employee's commuting area, the Employer shall, to the maximum extent of its discretion and/or authority under FTR, Chapter 302 and the USDA Relocation Allowance Regulation, reimburse that employee for all reasonable expenses associated with the change of duty station, including, but not limited to the following: relocation costs, transportation costs of an employee and immediate family member(s).

## **ARTICLE 15**

### **REDUCTION IN FORCE**

#### **Section 15.01. General**

The Employer agrees to minimize the adverse effect of a staff reduction whenever feasible. Attrition will be utilized for this purpose, when possible. The Employer further agrees to inform the Union of its intent with respect to a staff reduction or transfer of function of the work force as far in advance of notification to affected employees as possible, and prior to any final action taken on the matter. The Parties will then negotiate on the substance and/or the impact and implementation of the reduction-in-force or transfer of function of the work force.

#### **Section 15.02. Implementation. Notice to Employees and Union.**

- (1) The reduction-in-force (RIF) will be carried out in accordance with applicable laws, rules, and regulations.
- (2) The Employer agrees to provide the union at least fifteen (15) calendar days advance written notification prior to the issuance of the specific notice to employees. The information to be furnished the Union shall include:
  - (a) The reason for the action taken;
  - (b) The approximate number of employees who may be affected initially; (c) The types of positions anticipated to be affected initially; and
  - (d) The anticipated effective date that action will be taken.
- (3) The Employer will provide employees at least sixty (60) days specific written notice prior to the effective date of a reduction-in-force.
- (4) The affected employees may inspect regulations and records pertinent to their case.

#### **Section 15.03. Right to Reopen**

The Employer or the Union reserves the right to reopen this Article.

## **ARTICLE 16**

### **ACCEPTABLE LEVEL OF COMPETENCE**

#### **Section 16.01. Criteria for Granting a Within-Grade Increase**

- (1) An employee will be granted a within-grade increase when he/she has completed the required waiting period and the employee has performed at an acceptable level of competence during the waiting period as follows.
  - (a) One year to move to steps 2, 3, and 4
  - (b) Two years to move to steps 5, 6, and 7
  - (c) Three years to move to steps 8, 9, and 10
- (2) Supervisors are responsible for keeping employees informed of the acceptability of their work on a regular basis.
- (3) An employee is regarded as having reached an acceptable level of competence when the employee's demonstrated work performance in all critical elements meets or exceeds standards established at the "Fully Successful" level, and when the employee's rating of record is "Fully Successful" or higher. If the current performance appraisal does not support the determination to grant or deny the within-grade increase, a new appraisal will be prepared by the supervisor which supports the determination.
- (4) Where employees have been assigned to their present supervisor for less than ninety (90) days, and the supervisor cannot adequately assess the employee's performance, the supervisor shall secure the views of the employee's previous supervisor, when available, before making a determination.

#### **Section 16.02. Denial of Within-Grade Increase**

- (1) Consistent with the principle in Article 9 (Performance Appraisal) Section D(5) a supervisor will give ample warning, not less than forty-five (45) calendar days prior to the within-grade increase due date, to an employee whose performance does not or will not meet the acceptable level of competence requirement. The supervisor will advise the employee of his or her deficiencies, and tell the employee that he or she may not be certified as meeting the acceptable level of competence requirement unless performance improves. The supervisor will record the date and substance of this notification and provide a copy to the employee, which at a minimum shall include: those critical aspects of the employee's performance in which the employee is deficient and the extent of the deficiency; any instances, specifically described, which support the alleged deficiencies; assistance which will be offered so as to enable the employee to improve his/her performance so as to meet the requirements specified for the position.

- (2) An employee not under written performance elements and standards will have performance elements and standards established. A determination shall then be made upon completion of the minimum appraisal period of 90 days and shall be based on the employee's appraisal period of 90 days and shall be based on the employee's rating of record completed at that time. In certain circumstances, the supervisor may postpone the acceptable level of competence determination, e.g., the employee did not receive performance standards at least ninety (90) days before the end of the waiting period and he or she is not performing at an acceptable level of competence. In such cases, the period of postponement shall be not less than ninety (90) days.

### **Section 16.03. Notification of Withholding of Within-Grade Increase**

- (1) Written notification to the employee of a determination to withhold a within-grade increase will be given as soon as possible after completion of the waiting period. Such notification must:
  - (a) Set forth the reasons for the negative determination;
  - (b) Set forth the manner in which the employee must improve his or her performance in order to be granted a within-grade increase; and
  - (c) Notify the employee of his or her right to request reconsideration of the negative determination and file a written response within fifteen (15) workdays of receipt of the notice pursuant to section 16.05 of this Article.
- (2) When an employee receives a negative determination, he or she shall be granted a reasonable amount of official time to review the material relied upon to make the determination. The employee must otherwise be in a pay status in order to be granted official time.
- (3) If a negative determination is reversed by the Agency (either before or upon reconsideration), the effective date of the increase will be the original due date.

### **Section 16.04. Reinstatement of Within-Grade Increase**

After a within-grade increase has been withheld, the Employer will grant the within-grade increase after the employee has demonstrated sustained performance at an acceptable level of competence. After withholding a within-grade increase, the Employer, at a minimum, shall determine whether the employee's performance is at an acceptable level of competence after each fifty-two (52) weeks following the original due date for the within-grade increase.

### **Section 16.05. Appeal of Denial of Within-Grade Increase**

- (1) An employee may request reconsideration of a denial of a within-grade increase by filing, with their supervisor, not more than 15 workdays after receiving notice of determination, a written response to the denial. This request for reconsideration shall set forth the reasons that the agency shall reconsider the determination. Upon request,

the supervisor will meet with the employee and their representative. If the parties work within the local commuting area, this meeting shall be in person; otherwise, the meeting will be by teleconference unless the Parties mutually agree to a face to face meeting.

- (2) The Agency shall provide the employee with a written decision within 15 workdays of receipt of the request for reconsideration.
- (3) Where an employee is denied his/her within-grade increase by the reconsideration official, the letter transmitting the official's decision shall include a statement which informs the employee about his/her right to appeal the decision through the grievance procedure and the number of days in which the employee must request such an appeal through the Union.
- (4) When an employee is dissatisfied with the decision, they may invoke the grievance procedure at the 2<sup>nd</sup> Step, in accordance with Article 50 of this Agreement.

## **ARTICLE 17**

### **AWARDS PROGRAMS**

#### **Section 17.01. General**

The Employer will administer its Awards Programs fairly and equitably and in accordance with applicable laws, regulations, policies and the terms of this Agreement. All awards are granted by the Employer on the basis of merit, and within applicable budget limitations, to individuals or groups. While the criteria for different awards may vary, the decision to grant an award must be based on a careful evaluation of the merits of the job performance, special act or service, or the suggestion or invention.

#### **Section 17.02. Incentive Awards Program**

- (1) The Parties agree that an Incentive Awards Program is a necessary and useful mechanism through which employee accomplishments may be recognized.
- (2) The Employer will continue to foster and administer an on-going program which shall:
  - (a) Insure consistency and equity in the application of standards and criteria established for making awards;
  - (b) Act promptly on employee contributions so as to encourage maximum employee participation; and
  - (c) Utilize management review processes to identify program or operational areas in which superior work results warrant the consideration of employees for awards.
- (3) The Employer shall distribute the awards as follows:
  - (a) The Employer's awards pool shall be based upon the awards pool as determined in Fiscal Year 12 (FY12).
  - (b) The Employer shall distribute at least 1% of the total bargaining unit salary to eligible bargaining unit employees on an annual basis.
  - (c) If the Employer's awards pool budget increases beyond FY12, the Employer shall distribute 1% of the total bargaining unit salary to eligible bargaining unit employees based upon such increased budget.
- (4) Award pools will be created in each FNS Region and Headquarters with awards funding allocated proportionately to each FNS Region and Headquarters based on the percentage of the total bargaining unit employee salary for that Region and/or Headquarters.
- (5) The Employer will dedicate no less than eighty-five percent (85%) of the total awards budget as set forth in Section 17.02 (3) to be used to fund annual performance awards.
- (6) The Employer will dedicate not more than fifteen percent (15%) of the total awards budget, as set forth in Section 17.02 (3) to be used to fund all other discretionary awards (e.g., Spot Awards, Suggestion Awards, Superior Accomplishment Awards, Monetary Extra Effort Award (formerly known as "Special Act or Service Awards"))).

- (7) In the event non-bargaining unit employees receive an increased percentage for awards distributed in any year during the pendency of this agreement, the percentage of the total salary (base and locality included) awards pool for bargaining unit employees shall be increased by the same percentage.
- (8) a. The parties agree to meet annually to review awards distribution. If the parties mutually agree that changes and modifications to this article are necessary, further negotiations regarding changes or modifications shall be conducted in accordance with the provisions of Article 53.
- b. Either party may reopen negotiations of this article in the event that the percentage of bargaining unit employees who receive performance awards in any year of this agreement varies by ten percent (10%) or more, as compared to the four-year average percentage of bargaining unit employees who received performance awards under the predecessor agreement.
- (9) Should the Employer determine to change the budget for the bargaining unit award pool described in subsection (3) above, it shall give the Union formal notification, at least sixty (60) days in advance of its intention to do so. Upon such notice, either party may reopen this Article to negotiate the implementation and impact of the Employer's proposed change. Such negotiations shall be conducted in accordance with the provisions of Article 53.

### **Section 17.03. Performance Awards**

- (1) The Employer will determine the amount of funds available within each region and headquarters for performance awards for the "Outstanding" and "Superior" employees and will distribute those funds based on the following formula:
  - (a) For each employee, a Rating Score shall be established based on the rating for each element in the performance plan using the following point scale:

	Exceeds	Meets
Non-Critical Element	5	2
Critical Element	10	4

- (b) The points assigned to each element shall be totaled and divided by the weighted number of elements to determine an Average Rating Score.
- (c) In calculating the weighted average, critical elements will have twice the weight of noncritical elements.
- (d) The Average Rating Score is then multiplied by the employee's grade level to determine the Total Award Points for the employee.



- (e) The employee's share of the total award pool available for performance awards is that employee's Total Award Points as a percentage of all Total Award Points assigned to all eligible bargaining unit employees in that pool.
- (f) Awards to part-time employees will be pro-rated based upon the hours worked within the rating period.

## Awards Formula Example:

Employee A is a GS-11 who receives a “superior” rating. Points are assigned to each element as described above:

United States Department of Agriculture <b>Performance Appraisal</b>				1 Social Security No.	2 Position Number	3 Pay Plan	4 Occup. Series
5 Name (Last, First, Middle Initial) <b>EMPLOYEE A</b>				6 Grade/Step or Pay Level <b>GS-11</b>		7 Appraisal Period From: _____ To: _____	
8 Official Position Title				9 Organization Structure Code			
10 Duty Station		11 Funding Unit		12 Agency Use		13 NFC Use	
<p><b>Instructions</b></p> <p>Blocks 1 through 13, completed by NFC, should be reviewed and, if necessary, corrected.</p> <p>Block 11. Enter funding unit number.</p> <p>Block 14. Enter brief description of performance elements.</p> <p>Block 15A. Check performance elements identified as critical.</p> <p>Blocks 15B, 15C, 15D. Rate actual performance by entering 2 for critical elements and 1 for non-critical elements in appropriate column.</p> <p>Blocks 15E, 15F, 15G. Enter total of each column.</p> <p>Block 15H. Enter total from 15E, 15F and 15G.</p> <p>Block 16A. Check off the correct summary rating described in decision table (16B).</p> <p>Blocks 17 through 22. Self-explanatory.</p>							
<b>14 Performance Elements</b>				<b>15A Critical Element (✓)</b>	<b>15B Exceeds Fully Successful</b>	<b>15C Meets Fully Successful</b>	<b>15D Does Not Meet Fully Successfully</b>
1) ELEMENT 1				✓	2		
2) ELEMENT 2				✓		2	
3) ELEMENT 3				✓	2		
4) ELEMENT 4						1	
5)							
6)							
7)							
8)							
9)							
10)							
<p><b>16B Decision Table (check off Summary Rating in block 16A)</b></p> <p>Rating of Outstanding if 15E equals 15H.</p> <p>Rating of Unacceptable if any critical element is rated in 15D.</p> <p>Rating of Superior if no element is rated in 15D. 15F is greater than zero, and 15E is greater than 15F.</p> <p>Rating of Marginal if 15G is greater than 15E, and no critical element is rated in 15D.</p> <p>Rating of Fully Successful if none of the above apply.</p> <p>✓ Unacceptable for SES</p> <p>✓ Minimally Satisfactory for SES</p>				<p>15E Exceeds 4</p> <p>15F Meets 3</p> <p>15G Does Not Meet 0</p>		<p>15H Error total 7</p> <p>15E + 15F + 15G = 15H</p>	
<p>17 Employee (Check off appropriate box)</p> <p>I have a copy of USDA and Agency regulations on employee responsibilities and conduct. I have discussed them with my supervisor and questions have been answered to my satisfaction.</p> <p>18 Employee's Signature _____ Date _____</p> <p>If employee did not sign, state reason _____</p>				<p>16A Summary Rating (See Decision Table in 16B)</p> <p><input type="checkbox"/> Outstanding</p> <p><input checked="" type="checkbox"/> Superior</p> <p><input type="checkbox"/> Fully Successful</p> <p><input type="checkbox"/> Marginal ✓</p> <p><input type="checkbox"/> Unacceptable ✓</p> <p>✓ Unacceptable for SES</p> <p>✓ Minimally Satisfactory for SES</p>			
<p>(Instructions for resolutions of disputes are on the reverse of employee copy.)</p> <p>19 Supervisor's Signature _____ Date _____</p>				<p>20 Reviewer's Signature _____ Date _____</p>			
<p>21 Approving Official's or Funding Unit Manager's Signature (optional) _____ Date _____</p>				<p>22 FOR SES ONLY</p> <p>PLA to ES _____ Bonus Amount _____</p>			

The employee's performance elements and scores for each element are shown below. For this example, the employee has three critical elements and one noncritical element.

	Exceeds	Meets
<b>Element 1(critical)</b>	10	
<b>Element 2(critical)</b>		4
<b>Element 3(critical)</b>	10	
Element 4		2
Total Points By Category	20	6
Total Points	26	
Critical Elements	3	
Non-critical Elements	1	
Weighted Number of Elements		
(critical elements count as two) = (2 x 3) + 1	7	
Average Rating Score		
(Total Points divided by Weighted number of Elements) = $26 \div 7$	3.71	

- i. The points assigned to each element shall be totaled and divided by the weighted number of elements to determine an Average Rating Score. In calculating the weighted average, critical elements will have twice the weight of noncritical elements.

*Total points from above (20 points from Critical and 6 points from Non-Critical) = 26*

*Weighted number of elements = 3 critical elements + 1 non-critical element =  $(3 \times 2) + 1 = 7$*

*Weighted average =  $26 \div 7 = 3.71$*

- ii. The Average Rating Score is then multiplied by the employee's grade level to determine the Total Award Points for the employee.

*Total Award Points =  $11 \times 3.71 = 40.86$*

- iii. The employee's share of the total award pool available for performance awards is that employee's Total Award Points as a percentage of all Total Award Points assigned to all eligible bargaining unit employees in that pool.

*Assume 76 employees are in the awards pool, and that all Total Awards Points add up to 2838.*

*Assume the total awards pool is \$69,123.*

*Therefore, this individual's award =  $(40.86 \div 2838) \times \$69,123 = \$955$*

*Alternative calculation:*

*Each Award point is worth \$24.36  $(\$69,123 \div 2838)$ .*

*Individual's award =  $(\$24.36 \times 40.86) = \$955$*

## **Section 17.04. Quality Step Increases**

- (1) A QSI award is designed to recognize General Schedule (GS) employees for sustained outstanding performance and service to the organization, and to provide appropriate incentive for excellence in performance by granting faster than normal step increases. A QSI is not required or automatically granted for an "Outstanding" performance rating. A QSI may be granted based on an employee's annual performance appraisal when the following standards are met:
  - (a) Employee must have received an overall "Outstanding" rating for the most recent performance appraisal period.
  - (b) Employee must be expected to remain for at least ninety (90) days in the same position or in a similar position at the same grade level in which the performance can be expected to continue at the same level of effectiveness.
  - (c) Employee must be a General Schedule employee.

- (d) A QSI may not be granted to an employee who has received a QSI within the preceding 52 consecutive calendar weeks.
- (e) An employee may not receive more than one award for the same act. As such, an employee may not receive a QSI if he/she has received a performance award based in whole or in part on the performance rating of record for the same appraisal cycle.
- (f) The employee has not reached the maximum step of his/her grade.

#### **Section 17.05. Suggestion Awards**

- (1) The Employer will continue a program through which employees can submit suggestions concerning the improvement of the Employer's operations. The Employer will insure that any suggestions submitted by an employee are responded to within a reasonable period of time, but no later than 90 days from the employee's submission. This response shall be in writing and include a decision as to whether or not the suggestion has been accepted in whole or in part, as well as an explanation of the reasons for adoption or rejection.
- (2) An employee who has a suggestion adopted by the Employer will receive compensation in accordance with the USDA's *Guide for Employee Recognition*.
- (3) In the event a rejected suggestion is later implemented within a two (2) year period of the rejection date, and the employee is still employed by the Employer, the suggestion will be reconsidered at the employee's request and appropriate payment or time off award made.
- (4) Suggestion awards will be paid in accordance with government-wide rules and regulations.

#### **Section 17.06. Time-Off Awards**

- (1) A time-off award means an excused absence granted to an employee without charge to leave or loss of pay in recognition of a superior accomplishment or other personal effort that contributes to the quality, effort, or economy of Government operations.
- (2) Examples of employee achievement that might be considered for a time-off award include:
  - (a) Making a high quality contribution involving a difficult or important project or assignment;
  - (b) Displaying a special initiative and skill in completing an assignment or project before deadline;
  - (c) Using initiative and creativity in making improvements in a product, activity, program, or service;
  - (d) Ensuring the mission of the unit is accomplished during a difficult period by successfully completing additional work or a project assignment while maintaining the employee's own workload; and

- (e) Making a contribution to a project that is more than what is typically expected of an employee in that position.
- (3) As required by applicable regulation, each determination to grant a time-off award of more than one (1) workday shall be reviewed and approved by an official who is at a higher level than the official who made the initial recommendation. Approval will be based on reasonable and relevant criteria applied uniformly to all employees.
- (4) The Employer has determined that the first line supervisor may approve time-off awards for periods not to exceed one (1) workday without further review or approval.
- (5) When physical incapacitation for duty occurs during a period of time-off granted under this section, an employee may request sick leave for the period of physical incapacitation and the time-off award will be scheduled at another time.
- (6) In accordance with applicable regulations (5 CFR Part 451), a time-off award may not be converted to a cash payment under any circumstances.
- (7) The receipt of a time-off award does not prevent an employee from receiving any other monetary or incentive award and receiving monetary or incentive awards does not prevent granting a time off award. An employee cannot receive multiple awards for the same act and/or service.
- (8) The minimum amount of time for a time-off award shall be one (1) hour. A time-off award may be used in single blocks of time or in one-hour increments.
- (9) The scheduling and use of time-off awards shall be subject to the same approval process as is used for annual leave. The time-off award must be scheduled and used within one (1) year after the effective date the award was granted or it will be forfeited. Time-off awards should be scheduled so as not to conflict with use-or-lose annual leave.
- (10) A time-off award will be documented and retained in the employee's OPF.

#### **Section 17.07. Spot Award**

- (1) Spot awards are used to provide immediate recognition for a significant deed or accomplishment that may go unrecognized under normal incentive programs or which is not at the level of benefit/application to warrant an Individual Special Act and Group Special Act Award.
- (2) Spot Awards shall be limited to \$500.00 per award. An employee may only receive two (2) such awards per year, and the total amount of the awards pool that may be used to pay Spot Awards shall not be more than fifteen percent (15%).

### **Section 17.08. Monetary Extra Effort Awards (formerly known as Special Act Awards)**

- (1) These awards are used to recognize one-time, non-recurring contributions either within or outside of an employee's regular job responsibilities in recognition for a specific outstanding accomplishment such as a superior contribution on a short-term assignment or project, an act of heroism, a scientific achievement, a major discovery, or work that resulted in significant cost savings.
- (2) An employee who has been approved for a Monetary Extra Effort Award will receive compensation in accordance with the USDA's *Guide for Employee Recognition*.

### **Section 17.09. Award Program Information**

- (1) The Employer shall annually provide the NTEU National Office with awards data for bargaining unit employees. The Employer will also provide each FNS-NTEU Chapter President with the awards data for their respective region. This data will be in a mutually agreed upon digital format and consist of each recipient's name, grade, title, series, organizational unit, region/location, type or basis of award, amount of award (if monetary) and the effective date received. The data will designate, where applicable, instances in which one employee received more than one award. The Employer agrees, upon request, to provide the same information for non-bargaining unit employees, if required by law.
- (2) NTEU will be provided, on a fiscal year basis, a separate report detailing the distribution of awards by race/ethnicity/national origin, age, and gender identification data.

### **Section 17.10. OPM Regulations**

In the event that OPM issues regulations on this subject which are both significant and at variance with the above, this Article may be reopened for negotiations.

## **ARTICLE 18**

### **TRAINING**

#### **Section 18.01. General**

- (1) The Employer recognizes that a staff of well-trained employees is essential to the efficient accomplishment of its mission. While the Employer always attempts to recruit the best qualified persons available for employment, post-entry training is necessary if employees are to make their most effective and continuing contributions to the Employer's programs.
- (2) The Employer agrees to make available to all employees the training necessary for the performance of the employee's presently assigned duties or proposed assignment. Such training shall be made available to all employees without discrimination among them for non-merit reasons. Each employee is encouraged to show initiative in developmental opportunities that result from these activities. When an employee is selected for training, that employee is obligated to give their best thought and effort to that training.

#### **Section 18.02. Criteria for Approving Training Beyond Employer's Facilities**

An employee may request, and may be granted, training outside the Employer's facilities during his/her work hours without charge to leave. The request must be submitted in writing to the employee's immediate supervisor. The Employer shall consider the following factors in deciding whether such training should be approved, and if disapproved, to provide the employee, in writing, the basis for disapproval:

- (a) Severe workload problems do not preclude the employee's participation;
- (b) The training will enable the employee to increase his/her ability in his/her presently assigned duties or proposed assignment;
- (c) The training is not being taken solely for purposes of obtaining a degree;
- (d) The training requested represents a cost effective source of the needed training; and
- (e) Funds are available.

#### **Section 18.03. Reimbursement for Approved Training**

- (1) An employee who has obtained prior approval from the Employer shall be reimbursed for all authorized expenses for training not conducted by FNCS. Approval will be granted when the Employer reasonably determines that all the following circumstances are met:
  - (a) The training will enable the employee to increase his/her ability to perform his/her current job or a job he/she has been selected to fill;
  - (b) Comparable training is not available through Employer developed courses, and it would be too costly for the Employer to develop a suitable program at this time;
  - (c) Reasonable inquiry has failed to disclose suitable, adequate and timely programs being offered by other government agencies, or other more cost effective nongovernment sources;



- (d) The course meets the needs of the employee and the Employer as well as, or better than, other courses of its nature which may also be available at that time;
  - (e) The course is not being taken solely for the purpose of obtaining a degree; and
  - (f) Funds are available.
- (2) Employees who are reimbursed for education expenses will be obligated to remain in the employ of the Employer for no more than three times the total number of hours spent in the classroom (e.g., a 40 hours course would obligate an employee for 120 hours). In the case of full-time study, the length of the service agreement will be in accordance with applicable laws, rules and regulations.

#### **Section 18.04. Selection for Training Required for Promotion**

If training is required before an employee may be considered for a promotion, within his or her career field, selection for the training will be made in accordance with competitive merit procedures.

#### **Section 18.05. Dissemination of Information for Developmental Training Opportunities**

The Parties recognize that there are a multitude of training opportunities available which are not required for promotion, but which are viewed as positive developmental experiences not designed primarily to enable an employee to increase his/her ability in his/her present position. To the greatest extent practicable, information about agency-sponsored training will be widely disseminated. If there are more employees interested than there are spaces available for this type of developmental experience, unless a separate application and selection procedure has been developed, slots will be assigned on a first-come, first-served basis and a waiting list created. The Union will be consulted in the development of the procedures, when appropriate.

#### **Section 18.06. Individual Development Plan**

Employees who desire training beyond that discussed above are encouraged to work with their supervisor to develop an Individual Development Plan (IDP). Such plans shall be jointly established between the employer and the employee. The objectives of the plans will be to address skills needed by employees in their current positions, to prepare them for new career opportunities which may become available as a result of organizational restructuring or re-engineering of the positions of the Agency, and to address skills needed for advancement beyond their current grade levels. Each plan shall establish a series of milestones and shall state the responsibilities of each party to realize such milestones. Employees are encouraged to take initiative in their career development.

#### **Section 18.07. Workload Management**

The parties agree that mission accomplishment is the priority for both parties. The employee agrees to accept accountability to keep the supervisor informed about the status of her or his work especially in anticipation of an absence of a long duration.

Subject to mission accomplishment, once an employee is approved for a training course or program, the Employer will make adjustments to the employee's workload to ensure that the employee is able to meet all work-related deadlines.

#### **Section 18.08. Access to Training Information**

- (1) The Employer will make available to all employees the most current information available concerning training or educational programs provided by the Office of Personnel Management, the Department of Agriculture, and other appropriate sources on the FNCS Intranet site.
- (2) Employees shall be reminded that this material is available in an annual written notice distributed to each employee.

#### **Section 18.09. Training of Professional Employees**

Any other training involving a professional employee will be administered in accordance with Section 18.02 and 18.03 of this Article.

#### **Section 18.10. New Technology or Equipment Training**

When new technology or equipment is introduced in a unit and creates the need for different skills, knowledge or abilities in that unit, the Employer agrees to provide training to those employees directly affected.

#### **Section 18.11. Career Enhancement Program**

- (1) The Employer and the Union agree to the principle of upward mobility and career advancement for all of its employees. In furtherance of this objective, the Parties agree to establish a joint work group to assess the effectiveness of the FNCS existing Career Enhancement Program (CEP); to make recommendations on furthering the upward mobility of existing FNCS employees; and to ensure the consideration of internal candidates as an appropriate source for filling internal vacancies through the CEP.
- (2) The work group will be comprised of an equal number of representatives from the Union and the Employer with representatives from Headquarters and the Regions. Bargaining unit employees serving on the work group will do so on official time and shall be selected by the Union.

## **ARTICLE 19**

### **HOURS OF WORK**

#### **Section 19.01. General**

The Parties recognize that the use of alternative work schedules has the potential to improve productivity and morale and result in greater service to the public. Accordingly, bargaining unit employees are encouraged to use the types of Alternative Work Schedules listed in the Article to the fullest extent allowed by the Agreement, law, rule and regulation.

#### **Section 19.02. Definitions**

- (1) Basic Work Requirement – As defined by OPM, the number of hours, excluding overtime hours, that an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award.
- (2) Core Hours – The time periods during the workday, workweek, or pay period that are within the tour of duty during which an employee covered by a flexible work schedule is required by the agency to be present for work.
- (3) Compressed Work Schedule (CWS) – As defined by OPM, in the case of a full-time employee, an eighty (80)-hour biweekly basic work requirement that is scheduled by an agency for less than ten (10) workdays. As defined by Section 19.03(3)(d) of this Article, the available compressed schedules are limited to 5/4/9 and 4/10.
- (4) Credit Hours – As defined by OPM, those hours within a flexible work schedule that an employee elects to work in excess of his or her basic work requirement so as to vary the length of a workweek or workday. Section 19.03(3)(d) of this Article further defines credit hours.
- (5) Flexible Work Schedule (FWS) – A work schedule established under 5 U.S.C. §6122 that:
  - (a) In the case of a full-time employee, has an eighty (80)-hour biweekly basic work requirement that allows an employee to determine his or her own schedule within the limits set by the agency. Flexible schedules are limited to Basic Flexible Schedule and Maxiflex as described in Section 19.03; and
  - (b) In the case of a part-time employee, has a biweekly basic work requirement of less than eighty (80) hours that allows an employee to determine his or her own schedule within the limits set by the agency. Flexible schedules for part-time employees are described in Section 19.06.
- (6) Tour of Duty – The hours of a day, to include beginning and ending times, and the days of a week that constitute an employee's regularly scheduled work week.
- (7) Work Schedule – A schedule, within a two-week pay period, for which an employee is scheduled to perform work.

- (8) Work Week – The days of the week in which an employee is scheduled to work on his/her established work schedule. Available work days are Monday through Friday.
- (9) Work Hours – Employees may work between the hours of 6:00 a.m. and 8:00 p.m. Teleworking employees whose approved schedules do not presently conform to these provisions may retain existing scheduled hours unless business needs require modification. The parties agree that facilities services such as heating, air conditioning, security, etc., may not be available prior to 7:00 a.m. or after 6:00 p.m. Regularly scheduled tours of duty under all work schedules (as defined in Section 19.03(3)(d)) may not begin before 6:00 a.m. nor extend beyond 8:00 p.m. without supervisory approval. If a specific extraordinary circumstance arises, the Agency may approve an earlier starting or later ending time on a case-by-case basis, upon the employee's written request to his/her supervisor. The supervisor will provide the employee with a written decision within two (2) workdays of this request.

### **19.03. Work Schedule Options**

The work schedule options described in this Section apply to full-time employees with a basic work requirement of eighty (80) hours per pay period. Work schedules for part-time employees are defined in Section 19.06.

- (1) Basic 40-Hour Work Schedule – This fixed schedule consists of work on each working day of the pay period and the working hours on each day are the same (8 hours per day, Monday through Friday). The non-overtime workday consists of eight hours. Employees on Basic 40-Hour Work Schedules:
- (a) Will establish an individual tour of duty within available work hours (as defined in Section 19.02) to include the days worked during the pay period and working hours for each day.
  - (b) May not vary their work schedules or individual tours of duty outside of the procedures established in this Article.
  - (c) May not earn credit hours
  - (d) Will earn holiday pay for the number of hours they are normally scheduled for that day for federal holidays when no work is performed.
- (2) Compressed Work Schedule – Employees may either work a 5/4/9 Compressed Work Schedule or a 4/10 Compressed Work Schedule.
- (a) 5/4/9 – Within each two-week pay period, employees work eight nine (9)-hour days, one eight (8)-hour day and have one (1) day off.
  - (b) 4/10 – Within each two-week pay period, employees work eight ten (10)-hour days for eighty (80) hours during a pay period and have one (1) day off per week, for a total of two (2) days off per pay period.

(c) Employees on Compressed Work Schedules:

- (i) Will establish an individual tour of duty within available work hours (as defined in Section 19.02) to include the days worked during the pay period and working hours for each day.
- (ii) May not vary their work schedules or individual tours of duty outside of the procedures established in this Article.
- (iii) May not earn credit hours.
- (iv) Will earn holiday pay for the number of hours they are normally scheduled for that day for any federal holidays when no work is performed.

(3) Flexible Work Schedule - Employees may choose between one of two flexible work schedules:

- (a) Basic Flexible Schedule - Employees work ten (10) days and eighty (80) hours per pay period. Employees may vary their work hours as described in Section 19.03(3)(c)(iii).
- (b) Maxiflex - Employees must work eighty (80) hours per pay period, but may vary the number of hours worked on any given workday or the number of hours worked per week, subject to limits established by Section 19.03(3)(c)(iii). Employees may not participate in Maxiflex schedules until they have completed ninety (90) days of employment with the agency. However, employees with civil service status who have transferred from other federal government agencies may participate in Maxiflex after the first pay period of employment with FNCS.

(c) Employees on Flexible Work Schedules:

- (i) Must establish a regular tour of duty to define their workdays and work hours. The hours of work and total number of hours worked each day included in the tour of duty may vary. Regular tours of duty for employees on flexible schedules may not exceed ten (10) hours per day and must include work on at least eight (8) days per pay period.
- (ii) Must be present for core hours, as defined by this Article. Core hours are from 10:00a.m. to 2:00pm. Supervisors may waive the core hour requirement for up to two (2) days per pay period for those employees working a flexible schedule. Core hours are those hours that employees on flexible schedules must work on each day that is included in their tour of duty.
- (iii) Employees may deviate or flex from their established tour of duty by up to one (1) hour at the start and/or end of each work day without prior supervisory approval, as long as the total number of hours worked on that day does not deviate by more than one (1) hour from the scheduled tour of duty. Employees will provide, to the extent possible, advance notice to

their immediate supervisor of such schedule changes. This flexibility does not apply to required core hours.

- (iv) Employees on flexible schedules earn eight (8) hours of pay on federal holidays when no work is performed.
- (v) Employees who worked a schedule that included one or more workdays in excess of eleven (11) hours for at least half the pay periods in March, April and May, 2009, will be referred to as "Affected Employees." Affected Employees may work up to an equivalent number of days in excess of eleven (11) hours per day subject to the following restrictions:
  - a. Affected Employees may not work more than twelve (12) hours per day, absent specific advanced supervisory approval.
  - b. Affected Employees must be in compliance with established office hours, as set forth in Section 19.02(9) of this Agreement
  - c. Affected Employees will have sixty (60) calendar days from the implementation of this Agreement to submit a work schedule that includes workdays in excess of eleven (11) hours. In the event that an Affected Employee does not opt to return to a schedule that includes days worked in excess of eleven (11) hours within sixty (60) calendar days of the implementation of this Agreement, that employee shall lose all rights under this section.
- (d) Credit Hours - Credit hours are those that employees on flexible schedules may work in excess of their scheduled tours of duty so as to vary the length of a workweek or workday. Employees on flexible schedules may earn and use credit hours, subject to the following limitations:
  - (i) Credit hours are requested at the discretion of the employee, and are not directed or ordered. A request to earn credit hours must be submitted in writing in advance and must be approved by the supervisor. In considering credit hour requests, the Employer shall ensure that the work to be performed supports the Agency mission.
  - (ii) Generally, employees shall submit requests for credit hours at least two (2) days in advance, and supervisors will grant or deny such requests at least one (1) day in advance. This two (2)-days written advance notice requirement may be waived by the supervisor; however, the requirement for advance supervisory approval may not be waived.
  - (iii) Supervisors will not unreasonably withhold or delay the approval of credit hours. When denying a request for credit hours, the supervisor must issue a written denial, stating the specific basis for denial. This denial will be issued to the employee and the appropriate NTEU Chapter President within five (5) days of the denial of the employee's request.

- (iv) A full-time employee on a flexible schedule can accumulate no more than twenty-four (24) credit hours per pay period.
  - (v) Credit hours must be earned within available work days and hours, as defined in Section 19.02.
  - (vi) Employees earning and using credit hours must do so in quarter-hour increments; credit hours must be earned before they can be used.
  - (vii) Employees on flexible schedules may use earned credit hours to reduce the number of hours worked in a pay period by crediting them towards their basic eighty (80)-hour work requirement, subject to supervisory approval.
- (e) Attachment B summarizes key features of work schedule options.

#### **19.04. Submission and Approval of Work Schedules**

- (1) Employees must select either a basic, compressed or flexible work schedule as set forth in Section 19.03.
- (2) If the employee wishes to request a change in his/her current work schedule the employee shall submit a work schedule option and requested tour of duty to the supervisor at least ten (10) calendar days prior to the first pay period of the quarter.
  - (a) After receiving these requests the supervisor will evaluate them to determine:
    - (i) if the approval of the requests will interfere with the work unit's ability to accomplish its work; and
    - (ii) if the approval of the requests will prevent adequate coverage. In general, at least 40% of employees in a work unit should be present during core hours. The term "present" means on duty within the boundaries of the official duty station, or at an approved telework location. However, management may, at its discretion, lower this requirement if circumstances warrant. If the submitted tour of duty schedules do not negatively impact these areas, then the supervisor will approve the requests.
  - (b) Where an employee's request conflicts with the requests of other employees, to the extent that to grant approval would create a workload problem or insufficient office coverage, the affected employees will make every effort to reach an agreement amongst themselves. If these efforts fail, the employee with the most seniority (fixed by earliest entry on duty date with FNS) will be given first priority.
- (3) The approved request establishes the employee's work schedule option and tour of duty for the quarter. If the employee does not submit a timely request, the prior work schedule option and tour of duty shall remain in effect for the following quarter. This work schedule and tour of duty will remain in effect until the employee requests a change pursuant to Section 19.04(2).

- (4) Once a work schedule option and tour of duty request is approved, the Employer reserves the right to make changes in employees' work schedules or tours of duty, if it is determined that changes are necessary for the Employer to accomplish its work.
- (5) Employees on flexible schedules as defined in Section 19.03 may alter their tour of duty (days of work and hours worked) within a quarter, with advance supervisory approval. Such request shall be submitted by the Tuesday prior to the beginning of the pay period when the change is requested. However, management may, at its discretion, waive this requirement. If no change is submitted, the originally approved tour of duty is in effect.
- (6) Employees on fixed compressed schedules as defined in 19.03 may alter their off days within a quarter, with advance supervisory approval. Such request shall be submitted by the Tuesday prior to the beginning of the pay period when the change is requested. However, management may, at its discretion, waive this requirement. If no change is submitted, the originally approved tour of duty is in effect.
- (7) Employees may not switch between fixed and flexible schedules during a quarter. However, exceptions may be made on a case-by-case basis, for reasons other than increasing holiday hours and pay when no work is performed.

#### **19.05. RIB Investigators**

- (1) Notwithstanding other provisions of this Article, the following provisions apply to Retailer Investigation Branch (RIB) Investigators:
  - (a) Available Work Hours - The available work hours for RIB Investigators are Monday through Friday, 6:00 a.m. to 8:00 p.m. Regularly scheduled tours of duty may not begin before 6:00 a.m. nor extend beyond 8:00 p.m. If situations warrant an investigator to work outside of these hours, supervisory approval is required.
  - (b) Core hours for RIB Investigators are 10:00 a.m. to 12:00 p.m. on Tuesday, Wednesday, and Thursday.
  - (c) Flexible Schedules and Accumulation of Credit Hours- Subject to the four (4) credit hour limitations of Section 19.05(1)(d), Investigators may adjust their approved tour of duty schedule by one hour every day without supervisory approval. This one hour of time must be within the Available Work Hours of 6:00 a.m. and 8:00 p.m. Variations in time of more than one hour per day must be requested and require supervisory approval. The request can be made in person, by email, or telephone. Actual hours worked are to be recorded within WebTA or, as directed on the Weekly Activity Report (WAR).
  - (d) RIB Investigators may earn up to four (4) credit hours per pay period during the defined available work hours without prior supervisory approval. If an Investigator has reached the four (4)-hour limit for the pay period and an emergency situation, extreme hardship or exigent circumstance arises where the Investigator is not able to contact the supervisor to request additional credit



hours, the Investigator is to continue working. Thereafter, the Investigator is to contact the supervisor either upon returning to their duty station or at the start of their work day on the next business day. The Investigator shall explain the situation that arose and inform the supervisor of the additional credit hours worked. The Employer will approve all emergency situation requests for credit hours. Emergencies must be bona fide emergencies, not, for example, failure to complete assignments or completing paperwork.

- (e) RIB Task Forces and Special Assignments – Subject to supervisory approval, Investigators may be allowed to earn up to eight (8) hours of overtime or compensatory time for working on a task force assignment, or special assignment, on Saturday or Sunday. In addition, where authorization for overtime or compensatory time has been exhausted or is otherwise not permitted for working on a task force or special assignment on a Saturday and/or Sunday, Investigators may request supervisory approval to earn up to a total of sixteen (16) credit hours for such work on Saturday and/or Sunday, with the understanding that the total of overtime, compensatory time, or credit hours for such work on Saturday and Sunday may not exceed eight (8) hours in a given day nor sixteen (16) hours for the weekend.
- (f) The tour of duty for Task Forces and Special Assignments shall be extended to include Saturday and Sunday.

#### **19.06. Flexible schedules for Part-Time Employees**

(1) Part-time employees may work flexible schedules as follows:

- (a) Tours of duty must be established which define the days worked per pay period and the hours worked each day. In defining the tour of duty, the employee and supervisor shall consider the total hours to be worked under the part time schedule and the work needs of the agency. All tours of duty are subject to supervisory approval. All part-time tours of duty must be worked during available work hours as defined in Section 19.02.
- (b) Part-time employees on flexible schedules may vary their workday as described in Section 19.03(3)(c)(iii).
- (c) Part-time employees on flexible schedules may earn credit hours as defined in Section 19.03(3)(d), except that the number of credit hours accumulated cannot be more than one-fourth of the part-time employee's biweekly work requirement. Only that amount may be carried over from one pay period to the next.
- (d) On federal holidays when no work is performed, part-time employees shall receive pay for the typical, average or scheduled number of hours the employee would have otherwise worked, per OPM guidance. If a part-time employee on a flexible schedule has maintained a reasonably consistent schedule for several pay periods, the employee will be paid for the number of hours he or she would have otherwise worked. If the part-time employee does not have a typical schedule,

he or she will be paid for the average number of hours worked in prior weeks on days corresponding to the holiday. In no case can holiday pay exceed eight (8) hours.

#### **Section 19.07. Employee Breaks**

- (1) Employees will be granted at least (30) minutes per day as a lunch break and may take their lunch breaks at any time, circumstances permitting, except during the first and last hours of a scheduled workday.
- (2) Employees may have two (2) fifteen (15) minute breaks per workday, one prior to and one subsequent to the lunch break. It is understood that these breaks shall normally not occur during the first hour of the workday or the last hour of the workday of the individual employee.

#### **Section 19.08. Adjustments in Work Schedules While in Travel Status**

Employees in travel status or those attending training, conferences or other work related offsite activities who are on alternative work schedules, may remain on such schedules for the duration of the activity provided that the employee is able to complete eighty (80) hours during the pay period. The Employer reserves the right to revert an employee's work schedule to an eight (8)-hour workday for the duration of the activity and/or for the remainder of the pay period, if the supervisor determines there is no legitimate work that may be assigned to the employee which would allow him/her to work the established tour of duty.

## **ARTICLE 20**

### **TELEWORK**

#### **Section 20.01. General**

Telework is a program that permits employees to work at home or at other approved locations that are remote to the assigned duty station. The terms “telework,” “flexiplace,” and “telecommuting” are synonymous and include working at home or in satellite office sites or other approved telework sites, with or without computers and other electronic equipment. Telework may be the exclusive mode of work for those employees assigned to a home-based or alternative work location.

The Parties recognize that the use of telework has the potential to improve productivity and morale, and to provide the public with greater service. FNCS and NTEU jointly recognize the mutual benefits of a flexible workplace program to the Agency and its employees. Balancing work and family responsibilities and meeting environmental, financial and commuting concerns are among its advantages. Telework shall not be used to accommodate an employee’s needs as a care provider. It may, however, reduce the number of hours of care necessary due to time saved from not having to commute. It also may be used to accommodate a medically diagnosed illness or disability or a non-medical condition where such accommodation is not provided for under applicable statute. In recognizing this benefit, both parties also acknowledge the needs of FNCS to accomplish its mission.

Any Telework program established under this Article will be a voluntary program which permits employees to work at home or at other approved sites away from the office for part of the workweek or exclusively at an assigned home-based or alternative work location.

#### **Section 20.02 Eligibility for Telework**

(1) Pursuant to the Telework Enhancement Act of 2010, the Employer shall provide each employee with notice regarding his/her eligibility to telework, and will notify employees of any changes in eligibility. An employee will be eligible to telework unless his/her position is ineligible or he/she is personally ineligible, as set forth below.

(a) The employee’s position is ineligible, because:

(i) Duties require the employee’s physical presence to perform particular tasks that can only be performed at the worksite on a daily basis;

(ii) Duties require the employee’s daily presence at the worksite for contact with the public or co-workers;

(iii) Duties require the employee’s daily use of specialized equipment located only at the traditional worksite; or

(iv) Duties require the employee’s daily handling of classified materials.

(b) The employee is ineligible because:

- (i) The employee's most recent performance rating is less than Fully Successful;
- (ii) The employee has been officially disciplined for viewing, downloading, or exchanging pornography, including child pornography, from a government computer or while performing official Federal Government duties, in accordance with the Telework Enhancement Act;
- (iii) The employee has been officially disciplined for being absent without permission (AWOL), pursuant to the Telework Enhancement Act; or
- (iv) The employee is currently on a Performance Improvement Plan (PIP).

(2) To participate in telework, an eligible employee must make a request pursuant to Section 20.03 of this Article. The Employer has determined that employees not meeting the above eligibility requirements, except those established by the Telework Enhancement Act of 2010 (subsections (b)(ii) and (b)(3) of this Section) may be permitted to telework upon second-level supervisory approval. Any proposed denial will be shared with the union for review and comment prior to final decision.

### **Section 20.03 Requests for Telework**

(1) A telework-eligible employee who desires to telework must submit a request to his/her supervisor through a proposed Telework Agreement, attached as Attachment A. Employees may submit a request to participate in telework at any time.

(2) The supervisor may approve an eligible employee's request for telework, as long as the employee:

- (a) Possesses a reasonable level of experience in the current job. This may include trainees, probationary or temporary (not to exceed one (1) year) employees, at the supervisor's discretion;
- (b) Possesses the ability to perform successfully in the telework arrangement; and
- (c) Has defined work that can be measured or otherwise evaluated in terms of timeliness, quality and/or quantity.

(3) Requests from any employee who does not appear to meet the foregoing requirements, including those of Sections 20.06 and 20.07, may be granted with second-level supervisory approval. Any proposed denial will be shared with the union for review and comment prior to final decision.

(4) Situations appropriate for telework depend on the specific nature and content of the job, rather than just the job series and title. In making this determination, consideration must be given to whether the work being performed meets legitimate business needs and allows for the Employer's mission to be met.

## **20.04 Telework Agreements**

- (1) All teleworkers must have a current, written Telework Agreement, including those employees desiring to telework on an ad hoc or episodic bases. Variances in the telework schedule as contained in the Telework Agreement are expected but are subject to supervisory approval. Requests for and approval of variances in the telework schedule should be in writing, and may be communicated via e-mail. Upon approval of a request for telework and completion of the required training, the employee and the supervisor will sign a Telework Agreement, attached to this agreement as Attachment A, in accordance with the procedures outlined in this Section and in Sections 20.05 and 20.06.
- (2) The following procedures apply to Telework Agreements:
  - (a) Each currently teleworking employee must obtain a new Telework Agreement through the telework request process within sixty (60) calendar days of the effective date of this Agreement. The Employer will issue an agency-wide e-mail notifying employees of this requirement.
  - (b) Employees will be required to complete interactive training on telework. If an employee has previously completed required training within one (1) year of the request for telework, he/she will not be required to complete the training again. Employees teleworking as of the effective date of this Agreement do not need to complete the interactive training on telework to continue teleworking. Supplemental training is anticipated to be provided for both employees and supervisors. Employees are authorized up to three (3) hours to complete required and recommended training during the workday. The Employer will issue an agency-wide e-mail notifying employees of this requirement.
  - (c) Supervisors will retain a copy of each executed Telework Agreement for their files and provide copies to the employee and the designated Telework Coordinator. Employees are encouraged to provide a copy to his/her Union Chapter President.

## **Section 20.05. Time Frames and Procedures for Review of Telework Requests**

- (1) Upon receipt of a request for telework, the supervisor and the employee will meet to discuss and review the request. The supervisor's decision is to be provided to the employee within ten (10) workdays of the submission of the request. This timeframe may be extended by mutual agreement of the employee and supervisor. Employees may submit a request to participate in telework at any time.
- (2) If disapproved, the employee will be advised in writing with the reason(s) for disapproval. If the disapproval subsequently becomes the subject of arbitration, the parties will clarify all the issues in accordance with Article 51, Section 51.01(5), of the National Agreement. In the event that a supervisor denies an employee's application for telework for any of the above reasons, the supervisor shall state the reason in writing. The Union may file a grievance that, at the Union's option, may be elevated to the 3<sup>rd</sup> step of the parties' negotiated grievance process and be eligible for expedited arbitration.

- (3) If approved, the specifications of the arrangement will be agreed upon, reduced to writing, and signed by both the supervisor and the employee. The employee may begin working at the alternative worksite in accordance with the date established by the approved Telework Agreement and after completion of the required training. Training shall be consistent with the FNCS telework program as set forth in this Article. Upon the effective date of this agreement, all employees currently under Telework Agreements and their supervisors shall complete telework training within sixty (60) calendar days of the effective date of this Agreement in accordance with Section 20.04(2)(b) of this Article. The Employer agrees to provide telework training to all supervisors.
- (4) If, within ten (10) workdays of Telework Agreement approval, the employee is not permitted to work at the alternate work site, the supervisor must notify both the employee and Chapter President or Union designee in writing explaining the reason for the delay.

#### **Section 20.06. Other Considerations for Approval of Telework Request**

- (1) All telework arrangements are subject to prior supervisory approval. The approval or disapproval of an employee's request for telework will be based upon whether the approval of the telework request will interfere with the Employer's ability to accomplish its work. Decisions will be made on a case-by-case basis. No blanket limits on number of telework days beyond those in this Agreement may be established for any work unit. Absent emergency or exigent circumstances, such as but not limited to inclement weather or hazardous road conditions, requested changes to existing telework schedules must be submitted by the Tuesday prior to the beginning of the pay period for which the change is requested. However, management may, at its discretion, waive this requirement.
- (2) Employees must be in the office a minimum of two (2) workdays each week and a minimum of eight (8) hours each work day, taking into consideration telework and alternative schedule arrangements.
- (3) In addition, once a telework request is approved, the Employer reserves the right to make changes in an employee's telework schedule, if it is determined that a change in an employee's telework schedule is necessary for the Employer to accomplish its work. In such event the Employer will follow the procedures set forth in 20.07(8) of this Article. Additionally, while participating in a telework arrangement, employees are generally expected to remain in duty status despite closure of agency offices due to severe weather or other disaster, unless released by appropriate agency officials. If, due to emergency circumstances beyond an employee's control, the employee is unable to work at their telework location, the employee must contact his or her supervisor to request appropriate leave.
- (4) Where an employee's request for telework conflicts with the requests of other employees, to the extent that to grant approval would create a workload problem or insufficient office coverage as defined by Section 19.04(1)(ii), every effort will be made to reach an agreement among the affected employees. If these efforts fail, the employee with the most seniority (fixed by earliest entry on duty date with FNCS) would generally be given first priority, unless the Employer determines it is necessary to have certain skills or expertise available to meet work needs in the office at particular times.

## **Section 20.07. Telework Operating Principles**

- (1) The governing rules, regulations and policies concerning time and attendance, overtime and leave are unchanged by participation in telework. Employees will not perform overtime or night work, or earn credit hours without advance supervisory approval. The provisions for employee breaks addressed in Section 19.07 continue to apply.
- (2) In limited circumstances and upon employee request, the Employer may permit an employee to work exclusively at a home-based or alternative work location on a case-by-case basis. Such requests will not be unreasonably denied; however, the Employer may require the employee to provide documentation as to the need for this arrangement, and the Employer need only approve such requests if in the agency's business interests. Employees currently teleworking full-time will remain on full-time telework subject to execution of a Telework Agreement, and like all employees, subject to reassignment, so long as such reassignment is conducted in accordance with Article 14 of this Agreement.
- (3) Injuries that arise in the performance of duty at the alternate worksite are subject to the Federal Employees' Compensation Act.
- (4) Equipment and Work Environment.
  - (a) Budget permitting, the Employer agrees to provide, service and maintain any government-issued equipment approved as necessary for teleworkers to fulfill their employment duties and responsibilities. Employees may use their personal computer and peripheral equipment as long as they conform to Agency standards and protocols. The Employer also agrees to reimburse employees for reasonable, authorized business-related long distance telephone calls. Participating employees agree to protect government- owned equipment and information, and to use equipment and information only for official government purposes as described in this Agreement and in accordance with procedures established in the Federal Information Resources Management Regulation and related regulations and policies.
  - (b) The government is not responsible for operating costs, home maintenance, or any other incidental costs to the employee (e.g., utilities). Employees on telework are entitled to reimbursement for authorized expenses while conducting government business, including reimbursement for any approved supplies such as paper, ink, toner, etc. Employees should follow appropriate agency reimbursement procedures. Incremental utility costs associated with working at an alternate work site will not be paid by the Agency. Potential savings to the employee resulting from reduced commuting, meals, etc. may offset any incidental increase in utility expenses. Exceptions apply only where the personal expense directly benefits the Government, e.g., business related long distance or toll calls on the employee's personal phone where alternatives are not made available. Cost associated with the copying of work-related materials, fax charges, express mail, etc., will not be reimbursed by the Agency unless written approval has been given in advance. Employees participating in the telework program should be completing duties such as these while at the official duty station, to the extent possible.

- (c) If the employee uses his/her own equipment, the employee is responsible for its service and maintenance.
- (d) Employees will ordinarily be given a minimum of twenty-four (24) hours' advance notice regarding management service or maintenance of government-owned property. Such service or maintenance will occur during the employee's normal work hours unless circumstances dictate otherwise. The employee is also responsible for returning agency-owned equipment to the official duty station when discontinuing the telework schedule or when any maintenance or repair is required. FNCS will not be responsible for repairs, replacement, upgrades, or other related expenses involving employee-owned equipment.

(5) Recall Procedure.

- (a) Employees participating in telework programs, excluding those assigned to work exclusively at home or alternative work locations, must be accessible and available for recall to their regular offices for work needs that cannot be performed at the alternate worksite. Examples are: training, special meetings, new work requirements and emergencies (i.e., emergencies may include national emergencies or disasters; recall directed by the Department Secretary or Sub-Agency Administrator, or a bona fide team emergency, such as work production with an enhanced deadline). These examples are for illustrative purposes and are not meant to be all encompassing.
  - (b) Management will take full advantage of existing technology (teleconference, fax, etc.) where possible to minimize recall.
  - (c) The Agency will generally provide recalled employees with at least one (1) day of advance notice, except where the employee will be required to travel a significant distance, in which case the Employer will provide notice as far in advance as feasible in light of business needs and commuting challenges.
  - (d) A recall shall last no longer than is reasonable to complete the precise task or designated purpose of the recall.
  - (e) If an employee is recalled on the same day he/she is teleworking, travel time to the office is considered duty time. However, in such a situation, travel back home is not considered duty time.
  - (f) In the event an employee is recalled to the office on his/her telework day, that employee will be provided a mutually agreeable equivalent replacement time during which to telework within the pay period, to the extent practicable.
  - (g) In situations where the employee is given notice before the recall day, travel to and from the office is not considered duty time.
- (6) Teleworking employees must be available and accessible to supervisors, co-workers and customers at all times while performing work at an alternate worksite. Teleworking employees must ensure that incoming calls, voice mails, and emails are handled seamlessly with the same expectations as if they were on-site.



- (7) If, due to circumstances beyond an employee's control, the employee is unable to work at his/her telework location, the employee must contact his/her supervisor to request appropriate leave. When the inability to work arises as a result of a problem at the telework location, the employee must contact his or her supervisor in a timely manner, typically within thirty (30) minutes absent situations beyond the control of the employee, to request appropriate leave or return to the office.
- (8) Supervisors may modify or terminate an employee's Telework Agreement whenever the employee no longer meets the criteria outlined in this Article, does not conform to the terms of the Telework Agreement, or when the arrangement no longer supports the Agency's mission. If the Employer desires to modify or terminate an employee's Telework Agreement, the following procedures apply:
  - (a) The Employer will attempt to provide appropriate advance notice of the modification or termination of any agreement to the extent practicable. If possible, the notice period will be at least ten (10) workdays; and
  - (b) If applicable, the Employer will provide the employee with a Notice of Termination, in writing, indicating the reason(s) for termination of the Telework Agreement. The Employer will provide a copy of any such notice to the appropriate NTEU Chapter President.

Employees may appeal any modification or termination of the Telework Agreement to the Agency's designee. Termination of an employee's Telework Agreement does not prevent him/her from reapplying when he/she once again meets the criteria for telework.

- (9) Grievability: Employer's decisions on telework participation, recall and modification or termination of Telework Agreements are grievable. Decisions on requested variations in Telework Agreements are not grievable. However, if the employee alleges that a decision regarding a request for such variation is a prohibited personnel practice, the matter is grievable (see Article 50, Section 50.02).
- (10) For employees who are approved to be on telework, the employee will have the option of selecting from work schedules offered in Article 19 of this Agreement.
- (11) Issue Resolution: Agency managers and Union officials are encouraged to establish creative approaches to provide information and resolve problems regarding telework. Such approaches could include the local Labor-Management Relations Council (LMRC), joint task forces, joint committees, designated technical advisors, etc. Where there are disputes over participation, modification, recall or termination of a formal telework arrangement, the parties encourage agency and union officials to develop alternate dispute resolution methods to resolve such issues.

## **Section 20.08. Telework Information**

FNCS will provide each Union Chapter President with a telework summary report containing the following information: employee's name; employee's grade; employee's series; employee's division and/or program; the date of the employee's request for telework; the date of approval or denial and reason(s) for any denials; the number of telework days requested;

the number of telework days granted; the date of notice of any managerial terminations of telework and the reason(s) for such terminations. These reports will be distributed to NTEU Chapter Presidents on a quarterly basis.

#### **Section 20.09. Office Closures**

In light of the decision to close field offices in FY 2012 and in FY 2013, the Employer may permit employees affected by these office closures to telework exclusively (i.e., full-time telework) from a home-based site or alternative location. Employees who elect full-time telework will be required to execute a Telework Agreement consistent with their approved Tour of Duty forms. The Agency and the employee will comply with the provisions of this Agreement throughout the home-based or alternative worksite assignment. The Employer will provide all employees who elect full-time telework as a result of office closures with the equipment necessary to ensure that the employees' can fulfill their work responsibilities and duties in a seamless manner.

#### **Section 20.10 Expanded Telework Pilot**

On May 10, 2013, the parties entered into a one year Expanded Telework Pilot MOU. The Pilot began on September 16, 2013. See Attachment C.

## **ARTICLE 21**

### **OVERTIME/COMPENSATORY TIME**

#### **Section 21.01. General**

- (1) Employees may earn and will be compensated for overtime/holiday work and compensatory time in accordance with applicable laws, rules and regulations.
- (2) The Employer may require overtime/holiday work as a condition of employment, and agrees to distribute overtime/holiday work to all qualified employees in Federal Service, enter on duty (EOD) order, on a rotational basis. Locally available will be first considered. If more than one employee is qualified to perform the work, the Employer agrees to give due consideration to employee's personal circumstances. Qualified volunteers will be used when available in Federal Service EOD order.
- (3) Absent extenuating circumstances, the Employer agrees to provide the employee reasonable notice when scheduling an employee to work beyond their normal tour of duty. Every effort will be made to provide the employee no less than three (3) days advance notice, if required to work beyond an employee's regular tour of duty.
- (4) The Employer will remind employees annually via a general notice to check his/her Fair Labor Standards Act (FLSA) status on the official position description. The notice will also include a definition of the terms "exempt" and "non-exempt" as well as a definition of "compensatory time" and "overtime."

#### **Section 21.02. Overtime Defined. "Suffered and Permitted" Defined. Compensatory Time Approved, Earned and Used.**

- (1) For exempt employees overtime work means work performed by an employee, in excess of 8 hours in a day or in excess of 40 hours in an administrative workweek that is officially ordered or approved, in writing by an officer or employee to whom this authorization has been specifically delegated.
- (2) For non-exempt employees, overtime work means work performed by an employee, in excess of 8 hours in a day or in excess of 40 hours in an administrative workweek that is officially ordered or approved, in writing by an officer or employee to whom this authorization has been specifically delegated or work that is suffered or permitted.
- (3) For exempt employees on flexible work schedules, overtime work consists of hours of work that are officially ordered in advance and in excess of 8 hours in a day or 40 hours in a week, but does not include credit hours.
- (4) For full-time employees on compressed work schedules, overtime work consists of all hours of work in excess of the established compressed work schedule. For part-time employees overtime work must be hours in excess of the compressed work schedule for the day (more than at least 8 hours) or for the week (more than at least 40 hours).
- (5) "Suffered or permitted work" means any work performed by an employee for the benefit of the agency, whether requested or not, provided the employee's supervisor knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed. The concept of "suffered and permitted" is only

applicable to nonexempt employees covered by the Fair Labor Standards Act (FLSA).

- (6) At the request of a non-exempt employee, the Employer will grant compensatory time off from an employee's basic work requirement under a flexible work schedule, instead of overtime pay, for an equal amount of overtime work, whether or not irregular or occasional in nature. Otherwise the employee must be paid for the overtime.
- (7) Once compensatory time is earned, employees must use it by the end of the leave year after the year in which it is earned. Subject to management approval, compensatory time must be used before annual leave, provided this will not result in the forfeiture of annual leave. If compensatory time off is not requested or taken within the established time limits, or by the time of the employee's separation, transfer or resignation, the employee must be paid for overtime work at the overtime rate in effect for the work period in which it was earned.

#### **Section 21.03. FLSA Requirements Governing Overtime for Non-Exempt Employees**

- (1) The Employer shall compensate an employee who is non-exempt for all hours worked in excess of the employee's normal tour of duty at a rate equal to one and one half times the employee's hourly regular rate of pay.
- (2) At the request of an employee, the Employer will grant compensatory time off from an employee's tour of duty instead of overtime pay, for an equal amount of overtime work.
- (3) The Employer may not require that an employee be compensated for overtime work under this subpart with an equivalent amount of compensatory time off from the employee's tour of duty.

#### **Section 21.04. Statutory Requirements Governing Overtime for Exempt Employees**

- (1) For each employee whose rate of basic pay does not exceed the maximum rate for GS-10 (GS-10, Step 10) and who performs work outside of the employee's normal tour of duty, the employee shall be compensated by the payment of overtime.
- (2) For each employee whose rate of basic pay exceeds the maximum rate for GS-10 (GS-10, step 10), the employee shall be compensated for overtime work which is irregular or occasional, with either an equivalent amount of compensatory time off from the employee's tour or overtime pay at GS-10, step 1 rate if basic pay, which is solely at the discretion of the Employer.
- (3) At the request of an employee, the Employer will grant compensatory time off from an employee's tour of duty instead of overtime pay, for an equal amount of irregular or occasional overtime work.
- (4) For employees whose rate of basic pay does not exceed the maximum rate for GS-10 (GS-10, Step 10), the overtime rate is 1 1/2 times his or her hourly rate of basic pay.
- (5) For employees whose rate of basic pay exceeds the maximum rate for GS-10 (GS-10, Step 10), the greater of (1) one and one-half times the minimum hourly rate of basic pay for GS-10, or (2) the employee's own hourly rate of basic pay.

All regularly scheduled overtime must be compensated in premium pay, unless the employee is on a flexible schedule and the employee requests the compensatory time.

## **ARTICLE 22**

### **PARKING**

**(This Article is Reserved for Local Bargaining)**

## **ARTICLE 23**

### **ANNUAL LEAVE**

#### **Section 23.01. Request for Annual Leave**

- (1) Use of annual leave is a right of the employee, subject to approval by the supervisor. When an employee submits a formal and timely request for leave on the required form SF-71, the employer will approve and schedule leave either at the time requested by the employee or if that is not possible, because of the employer's heavy workload or requirement for office coverage, at another time, mutually agreed upon.
- (2) Where an employee's request for annual leave conflicts with the requests of other employees to the extent that to grant leave to all who have requested would create a workload problem or insufficient office coverage, every effort will be made to reach an agreement among the affected employees. If these efforts fail, the employee having requested leave on the earliest date shall be granted the leave. In the case of simultaneous requests the most senior employee will be granted leave. If the initial request for leave is denied the employee may request and the Employer must provide specific reasons for the denial to the employee in writing.
- (3) For the period between December 1 and January 15, the employee will provide thirty (30) days advance notice for requests of one week or more of annual leave.

#### **Section 23.02. Extended Annual Leave and Leave Without Pay**

- (1) Extended annual leave may be requested by eligible employees. The supervisor will grant such leave provided that granting such leave does not cause an unusual staffing or workload problem.
- (2) The employer agrees to authorize annual leave or leave without pay to a Union representative for attendance at a union sponsored convention or meeting, as long as the employee has requested the leave one (1) work week in advance, if workload permits.

#### **Section 23.03. Annual Notice of Use or Lose Leave**

In September of each year, the Employer will issue a notice advising and reminding employees of the regulations concerning use or lose annual leave and the need to request annual leave to avoid unintended forfeiture.

#### **Section 23.04. Denial of Annual Leave**

The Employer may not deny annual leave as an act of discipline.

## **ARTICLE 24**

### **SICK LEAVE**

#### **Section 24.01. Sick Leave Use**

- (1) The employee shall earn and use sick leave in accordance with applicable laws and regulations. Sick leave shall be administered in accordance with applicable laws and regulations. The minimum increment for using sick leave shall be one-quarter hour. The use of sick leave includes time spent traveling to and from a medical appointment.
- (2) The Employer will grant accrued sick leave to an employee when the employee:
  - (a) Receives medical, dental or optical examination or treatment;
  - (b) Is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy or childbirth;
  - (c) Provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment;
  - (d) Provides care for a family member with a serious health condition;
  - (e) In accordance with 5 CFR §630.401(a)(3)(iii), provides care for a family member who would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease;
  - (f) Makes arrangements necessitated by the death of a family member or attends the funeral of a family member;
  - (g) Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease; or
  - (h) Must be absent from duty for purposes related to his or her adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.
- (3) For purposes of this Article, a "family member" means an individual with any of the following relationships to the employee:
  - (a) Spouse, and parents thereof;
  - (b) Sons and daughters, and spouses thereof;
  - (c) Parents, and spouses thereof;

- (d) Brothers and sisters, and spouses thereof;
  - (e) Grandparents and grandchildren, and spouses thereof;
  - (f) Domestic partner, and parent thereof (including domestic partners of any individual previously listed); and
  - (g) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- (4) For purposes of this Article, a serious health condition shall have the meaning set forth in 5 CFR §630.1202.

#### **Section 24.02. Limits on Sick Leave Usage to Care for Family Members**

- (1) In accordance 5 CFR §630.401(b), An employee may use up to one hundred and four (104) hours of sick leave each leave year for the purposes described in Section 24.01 B(3), B(5) and B(6) above. An employee may use up to 480 hours of sick leave each leave year for the purposes described in Section 24.01 B(4) above.
- (2) For part-time employees, paragraph A of this Section shall be applied in accordance with 5 CFR §630.401(b) and (c).
- (3) In accordance 5 CFR §630.401(d), if, at the time an employee uses sick leave to care for a family member with a serious health condition, they have used any portion of sick leave to care for family members authorized under Sections 24.01 B(3), B(5) and/or B(6), that amount must be subtracted from the maximum number of hours authorized under Section 24.01 B(4) to determine the total amount of sick leave the employee may use during the remainder of the leave year to care for a family member with a serious health condition. If an employee has previously used the maximum amount of sick leave permitted to care for a family member with a serious health condition in a leave year, he or she is not entitled to use additional sick leave to care for family members under Sections 24.01 B(3), B(5) and/or B(6).

#### **Section 24.03. Procedures for Requesting Sick Leave**

Whenever possible, employees must request the use of sick leave in advance. If the use of sick leave cannot be anticipated, the request for approval shall be communicated to the Employer within one (1) hour after the start of the employee's normal tour of duty on the first day of absence, unless the employee is precluded from doing so due to reasons beyond the employee's control. In this situation, the employee must document the request for the use of sick leave immediately upon their ability to do so, but no later than her/his return to work. Contact will be made with the employee's immediate supervisor or her/his designated official. In the event the employee does not contact their supervisor or designated official during the reporting period, the supervisor will not record the leave status until the end of the day, except for the need to process time and attendance reports. If the employee's leave status



has not been clarified by the end of the day, the absence may be charged to AWOL. This will not preclude a later change in leave status for good and sufficient reasons. An employee will inform the supervisor of the anticipated extent of the absence. If the absence extends beyond the anticipated period, an employee will inform her/his supervisor of the situation promptly.

#### **Section 24.04. Medical Documentation**

- (1) An employee may be required to furnish an acceptable medical certificate to substantiate a request for approval of sick leave if the sick leave exceeds three (3) days.
- (2) “Medical certificate” is defined as a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination or treatment, the period of disability while the patient was receiving professional treatment and the time when the employee is expected to return to full or limited duty.
- (3) Employees will not be required to furnish a medical certificate to substantiate a request for approval of sick leave for periods of three (3) consecutive workdays or less, except for situations addressed in Section 24.09.
- (4) Employees will not be required to furnish a medical certificate on a continuing basis if the employee suffers from a chronic illness or injury which does not necessarily require treatment, although absence from work may be necessary and the employee has furnished medical certification of the chronic condition. However, the medical certification is subject to periodic recertification by a competent medical authority.
- (5) In accordance with 5 CFR §630.405(c), an employee who requests sick leave to care for a family member with a serious health condition may be required to provide an additional written statement from the health care provider concerning the family member’s need for psychological comfort and/or physical care. The statement must certify that the family member requires psychological comfort and/or physical care, the family member would benefit from the employee’s care or presence and the specific amount of time the employee is needed to care for the family member.
- (6) In accordance with 5 CFR §630.405, an employee must provide administratively acceptable evidence or a medical certificate for a request for sick leave no later than 15 calendar days after the date the supervisor requests it. The Agency may consider an employee’s self-certification as to the reason for his or her absence as administratively acceptable evidence, regardless of the duration of the absence. If it is not practicable under the particular circumstances to provide the requested documentation within 15 calendar days despite the employee’s diligent, good faith efforts, the employee must provide it no later than 30 calendar days after the date it was requested. If an employee does not provide the requested documentation within the specified time period, they are not entitled to sick leave and may be charged annual leave, leave without pay or absent without leave, as subsequently requested and/or appropriate.
- (7) In the event that an Employer does not approve of the documentation that the employee provides and needs additional medical information:

- (a) A health care provider representing the Employer, including a health care provider employed by the Employer or under administrative oversight of the Employer, may contact the health care provider who completed the medical certification, with the employee's permission, for purposes of clarifying the medical certification.
  - (b) If applicable, the Employer shall provide to the employee a list of the essential functions of her/his position which the health care provider will review for purposes of certifying that the employee was/is unable to perform an essential function and offer a brief explanation in accordance with the employee's privacy rights.
- (8) Both the Union and the Agency recognize the need to protect confidentiality and privacy with regard to medical information/documentation. The parties will only share medical information/documentation with those who have a work-related need to know and in accordance with the Privacy Act.

#### **Section 24.05. Sick Leave to Attend Health Unit**

- (1) Except for an emergency, an employee may only leave the work site to attend an appropriate agency health unit in a federally controlled building when he/she has provided prior notification to the Employer. An employee who is returned to duty within one (1) hour will not be charged with leave.
- (2) Should the health unit or Employer recommend that an employee be sent home and the supervisor releases that employee, sick leave will be charged beginning at the time the employee told his/her supervisor that he/she was unable to continue working.

#### **Section 24.06. Use of Other Leave in Lieu of Sick Leave**

An approved absence, which would otherwise be chargeable to sick leave, will be charged to leave without pay or annual leave at the request of the employee.

#### **Section 24.07. Use of Sick Leave During Annual Leave**

An employee who becomes ill while on annual leave may have the time of illness changed to sick leave, if requested and available upon return to work.

#### **Section 24.08. Approved Sick Leave as Basis for Personnel Action**

The use of approved sick leave may not be relied upon in any personnel action such as an employee appraisal, evaluation, disciplinary action, career ladder promotion or merit promotion action, absent appropriate notice, subject to due process and in accordance with all applicable laws, rules or regulations.

#### **Section 24.09. Sick Leave Abuse**

When a supervisor has reasonable grounds to believe an employee is abusing sick leave, the supervisor will counsel the employee with respect to the use of sick leave. The counseling will be documented in writing, with a copy to the employee, and the employee informed that

she or he has a right to Union consultation, that restrictions may be imposed if the described abuse continues, and the nature of the potential restrictions. If the sick leave record does not show elimination of the described sick leave abuse after the counseling, the employee will be given written notification requiring the employee to provide a certificate from a competent medical authority for all absences of any duration for which sick leave is requested. This notice should contain justification as to why the employee was given this additional requirement, such as stating the number of hours of sick leave used in a specific period, their sick leave pattern, balance, etc. Once imposed, the requirement to furnish certificates from a competent medical authority will be reviewed no later than every six months to determine if it should be continued. At the time of the review, the employee will be counseled and advised in writing if the requirement is to be continued or canceled.

## **ARTICLE 25**

### **ADVANCED ANNUAL/SICK LEAVE**

#### **Section 25.01. Criteria for Advancing Annual Leave**

- (1) Employees will be given advanced annual leave, unless the Employer determines their services are necessary, when:
  - (a) They are eligible to earn annual leave;
  - (b) They have served more than ninety (90) days in their current appointment;
  - (c) Their request does not exceed the amount of annual leave they would earn during the remainder of the leave year;
  - (d) Valid requests for annual leave by other employees will take precedence over requests for advanced annual leave; and
  - (e) There is a reasonable expectation they will return to duty long enough after using the advanced annual leave to earn the leave granted before the end of the leave year. Annual leave may not be advanced when it is known (or reasonably expected) the employee will not return, such as when the employee has filed for disability retirement, after receiving notice of separation or furlough, or submitted a resignation.

#### **Section 25.02. Criteria for Advancing Sick Leave**

- (1) In accordance with 5 CFR §630.402, Employees eligible to earn sick leave may be granted advanced sick leave at any time during the leave year for the amounts and reasons as follows:
  - (a) Up to 240 hours for a full-time employee:
    - (i) Who is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy or childbirth;
    - (ii) For a serious health condition of the employee or a family member;
    - (iii) When the employee would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by their presence on the job because of exposure to a communicable disease;
    - (iv) For purposes related to the adoption of a child; or
    - (v) For the care of a covered service member with a serious injury or illness, provided the employee is exercising their entitlement under 5 U.S.C. §6382(a)(3).
  - (b) Up to 104 hours to a full-time employee:
    - (i) When they receive medical, dental or optical examinations or treatment;

- (ii) To provide care for a family member who is incapacitated by a medical or mental condition or to attend to a family member receiving medical, dental or optical examination or treatment;
  - (iii) To provide care for a family member who would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease; or
  - (iv) To make arrangements necessitated by the death of a family member or attend the funeral of a family member.
- (2) Two hundred forty (240) hours is the maximum amount of advanced sick leave employees may have to their credit at any one time. For part-time employees or employees on an uncommon tour of duty, the maximum amount of sick leave a supervisor may advance must be prorated according to the number of hours in the employee's regularly scheduled administrative workweek.
- (3) Sick leave may not be advanced when it is known (or reasonably expected) the employee will not return, such as when the employee has filed for disability retirement, after receiving notice of separation or furlough, or submitted a resignation.
- (4) The request for advanced sick leave must include a Medical Certificate or other administratively acceptable evidence. A supervisor has discretion to consider what constitutes administratively acceptable evidence in accordance with 5 CFR §630, Part D. "Medical certificate" is defined as a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination or treatment, the estimated period of disability while the patient is expected to receive professional treatment, and the time when the employee is expected to return to full or limited duty.
  - (a) In the event that an Employer does not approve of the documentation that the employee provides and needs additional medical information:
    - (i) A health care provider representing the Employer, including a health care provider employed by the Employer or under administrative oversight of the Employer, may contact the health care provider who completed the medical certification, with the employee's permission, for purposes of clarifying the medical certification.
    - (ii) If applicable, the Employer shall provide to the employee a list of the essential functions of her/his position which the health care provider will review for purposes of certifying that the employee was/is unable to perform an essential function and offer a brief explanation in accordance with the employee's privacy rights.

### **Section 25.03. Serious Health Condition Defined**

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

**Section 25.04. Advanced Leave Upon Separation**

Employees who leave the Agency with a negative annual and/or sick leave balance are required to reimburse the Employer by refunding the amount paid for which they are indebted or having the amount deducted from any compensation due. Reimbursement is not required and will be waived if an employee is separated because of death, disability retirement or resignation/removal for physical disability which prevents the employee from returning to duty or continuing in the service (which is evidenced by acceptable medical documentation).

## **ARTICLE 26**

### **LEAVE OF ABSENCE**

#### **Section 26.01.**

- (1) LWOP: Leave without pay is a temporary nonpay status and nonduty status (or absence from a prescheduled tour of duty) for a short period of time, which, at the Agency's discretion, may be granted at the employee's request.
- (2) Under the provisions of Executive Order No. 5396, July 17, 1930, a disabled veteran shall be permitted to use sick leave, annual leave or leave without pay or any combination thereof, in order to receive medical treatment.

#### **Section 26.02. Criteria for Approving Leave of Absence**

- (1) Unless the Employer determines that the employee's services are necessary:
  - (a) The Employer agrees to approve leave of absence for any employee elected to a position of national office of the National Treasury Employees Union for the purpose of serving full time in the elective position.
  - (b) Such leave of absence will be for a period concurrent with the term of office of the elected official and will automatically be renewed by the Employer upon notification in writing from the elected official that he/she has been reelected and wishes to continue in a leave of absence status.
  - (c) The Employer agrees to approve leave of absence for employees for the purpose of serving in full time appointed positions for the National Treasury Employees Union. The term of the leave of absence will be no more than two (2) years.
  - (d) All affected employees will have their leave of absence renewed for an additional two (2) year period upon request.

#### **Section 26.03. Criteria for Approving Leave Without Pay**

- (1) Unless the Employer determines that the employee's services are necessary, leave without pay will be granted when it is of acceptable cost to the Employer and meets the needs of the employee and the Employer. The LWOP request must contain estimated duration and reason. Valid requests include:
  - (a) Attending school, if the course of study will increase skills on the job;
  - (b) For employees whose applications for disability compensation are pending;
  - (c) For illness or injury documented by medical evidence, if the employee is expected to return to duty;

- (d) While being paid disability compensation unless permanently disabled;
  - (e) To teach at colleges and universities;
  - (f) To work in non-federal public or private enterprises as provided in current laws and regulations where the work is temporary and the following provisions are met:
    - (i) The activity in which the employee is to be engaged is one of special interest to the Department and will result in increased job ability applicable to the work of the Department;
    - (ii) The work does not involve the use of information secured as a result of employment in the Department to the detriment of public service;
    - (iii) That such employment does not tend to bring criticism on the Department or cause embarrassment; and
    - (iv) That the employee is not accepting office in organizations nor permitting the use of his/her name in the advertising matter of organizations commercializing the results of research work conducted by the Department, irrespective of any merits that such enterprise may appear to possess.
  - (g) Subject to the provisions of the Family Medical Leave Act.
  - (h) To engage in political activities permitted under the Hatch Act Reform Amendments of 1993 for up to 90 days.
- (2) A condition of granting leave without pay is that the employee will be expected to return to duty. Employees may request leave without pay in lieu of annual leave. Such leave will be granted unless the Employer reasonably determines that the employee's services are necessary.



## **ARTICLE 27**

### **ADMINISTRATIVE LEAVE**

#### **Section 27.01. Definition**

Administrative leave is an excused absence from duty without loss of pay and without charge to leave.

#### **Section 27.02. Voting**

When voting polls are not open at least three hours before or after an employee's tour of duty, he/she may submit a written request and will be granted a sufficient amount of administrative time by his/her supervisor which will permit him/her to report for work three hours after the polls are open or leave work three hours before the polls close unless precluded by a business exigency. If administrative leave is denied for a business exigency, the supervisor will provide a written explanation for the denial within one hour of the denial.

#### **Section 27.03. Inclement Weather**

- (1) When it becomes necessary to close the post of duty because of inclement weather or hazardous conditions, the Employer will act in accordance with the decision of the Departmental or Regional decision-making body. The Employer will make a reasonable effort to inform all employees of the decision. If the Agency is not closed, but inclement weather conditions described above exist, which prevents an employee from getting to work, the Employer agrees to grant administrative leave to the employee for absence from work for a part or all of the employee's workday, if the employee can provide a reasonably acceptable explanation, in writing, to the Employer that every reasonable effort was made to reach work. Determining factors used by the Employer in a decision to grant administrative leave due to emergency or inclement weather conditions will include: the distance between the employee's residence and place of work; mode of transportation normally used; efforts by the employee to get to work; the physical handicap of the employee if any, and success of other similarly situated employees in being able to report to work.
- (2) The Employer will make reasonable efforts to accommodate handicapped employees so that they will be timely notified of a decision to close their post of duty.
- (3) Once a year, the Employer will notify all employees of the procedures to be followed in the event of inclement weather or hazardous conditions. This notice will state how employees will be notified and the procedures to be followed.

#### **Section 27.04. Donation of Blood**

In the event that an employee requires time for rest and recuperation as a result of the donation of blood for which no compensation is received, the Employer agrees to approve

administrative leave, as needed, but for no more than four (4) hours immediately after, but not including, the period of blood donation.

Pursuant to 5 U.S.C. §6327, an employee is annually entitled to no more than seven (7) days of administrative leave to serve as a bone-marrow donor, and no more than 30 days of administrative leave to serve as an organ donor.

#### **Section 27.05. Tardiness**

Occasional tardiness of up to one (1) hour beyond the employee's starting time will be excused without charge to leave for adequate reasons.

#### **Section 27.06. Adverse Working Conditions**

The Employer agrees that when unusually hot or cold or other adverse working conditions exist, the Employer will grant administrative leave in accordance with applicable laws, rules and regulations. Before administrative leave is granted, the Employer will determine whether conditions are such to substantially interfere with work accomplishment. Within two (2) hours of an adverse working condition materializing, the Employer will contact the appropriate NTEU Chapter President to provide a status report of the situation and the expected duration of the problem. Communication updates will continue every 60 minutes thereafter.

When adverse working conditions occur impacting employee health and safety, such as failures in heat, air conditioning, power failure, or sanitary conditions, the Agency will determine whether to release employees within a maximum of four (4) hours of the occurrence. When adverse working conditions occur due to technological or equipment failure, upon employee request, the Employer will direct the employee as to the work to be completed during this period.

#### **27.07. Volunteer Work**

In accordance with OPM guidance and if workload permits, employees may be granted up to 8 hours of duty time per leave year to participate in Agency-sponsored or sanctioned volunteer activities directly related to the Agency's mission. Decisions regarding employees' participation in such events shall be made on a case-by-case basis.

## **ARTICLE 28**

### **FAMILY AND MEDICAL LEAVE**

#### **Section 28.01. Parental Leave**

Parental leave may be requested by all employees (male or female). This leave may consist of any combination of sick leave, annual leave, leave without pay, and earned compensatory time, as appropriate and as approved by the supervisor. Available sick leave may be used for the time required for physical examinations and the period of incapacitation due to pregnancy and childbirth. Employees may also request advance sick leave in accordance with established procedures.

#### **Section 28.02. Family Medical Leave**

(1) Pursuant to the Family Medical Leave Act, employees (male or female) shall be entitled to a total of 12 workweeks of leave during any 12 month period, in accordance with applicable laws and regulations, for one or more of the following reasons:

- (a) The birth of a son or daughter of the employee or in order to care for such son or daughter.
- (b) The placement of a son or daughter with the employee for adoption or foster care.
- (c) To care for the spouse, or a son, daughter, parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.
- (d) Because of a serious health condition that makes the employee unable to perform the functions of the employee's position.
- (e) Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

(2) If foreseeable, the employee shall provide the Employer with not less than 30 days advance notice before the date the leave is to begin, of the employee's intention to take leave under paragraph (1) above. However, if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable. The Employer may require the employee's request to be supported by certification issued by the health care provider of the employee, or the son, daughter, spouse, or parent of the employee, as appropriate. An employee who meets the criteria set forth above may not be denied leave.

#### **Section 28.03. Serious Health Condition Defined**

The term serious health condition means an illness, injury, impairment or physical or mental condition that involves:

- (a) inpatient care in a hospital, hospice, or residential medical care facility; or
- (b) continuing treatment by a health care provider.

## **ARTICLE 29**

### **OTHER LEAVE PROVISIONS**

#### **Section 29.01. Religious Holiday**

- (1) An employee will be granted annual leave or leave without pay for a workday, which occurs on a religious holiday, unless the Employer determines that the employee's services are necessary, so long as the employee requests such leave one workday in advance.
- (2) An employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to engage in overtime work for time lost for meeting those religious requirements.
- (3) To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of an agency's mission, the Employer shall, in each instance, afford the employee the opportunity to work compensatory overtime and shall, in each instance, grant compensatory time off to an employee requesting such time off for religious observances when the employee's personal religious beliefs require that the employee abstain from work during certain periods of the workday or workweek.
- (4) For the purpose stated in paragraph (2) above, the employee may work such compensatory overtime before or after the granting of compensatory time off. A granting of advanced compensatory time off should be repaid by the appropriate amount of compensatory overtime work within a reasonable period of time. Compensatory overtime shall be credited to an employee on an hour for hour basis or authorized fractions thereof. Appropriate records will be kept of compensatory overtime earned and used.

#### **Section 29.02. Military Leave**

Any full time permanent or part-time permanent employee who is a member of the National Guard or other reserve unit of the Armed Forces shall be entitled to military leave for each day of active duty in such organization up to a maximum of fifteen (15) calendar days in a fiscal year. Unused military leave up to fifteen (15) calendar days may be carried over for a maximum of thirty (30) calendar days and used in the next year. Approval of the military leave provided in the foregoing shall be based on the copy of the military orders directing the employee to active duty. The employee must furnish a copy of the certification of completion of such duty to the supervisor when the employee returns to work.

#### **Section 29.03. Court Leave**

An employee with a regular scheduled tour of duty is entitled to court leave in accordance with applicable laws, rules and regulations. Upon being notified an employee needs court leave, the Employer shall advise the employee as to overtime, fees, travel expenses, and other appropriate compensation.

## **ARTICLE 30**

### **FITNESS-FOR-DUTY EXAMINATIONS**

#### **Section 30.01. General**

The Employer may order an employee to undergo a fitness-for-duty examination only in accordance with those regulations set forth in 5 CFR §339.301.

#### **Section 30.02. Advance Notice of Examination**

Except in emergency situations, an employee is entitled to five (5) workdays advance written notice that they are to take a fitness-for-duty or psychiatric examination. In the event that the employee is requested to set up an appointment, they shall be allowed reasonable time to do so. The notice will set forth the reasons for the examination, and the general scope and character of the examination.

#### **Section 30.03. Medical Documentation**

The agency designates the examining physician or other appropriate practitioner, but must offer the individual an opportunity to submit medical documentation from his or her personal physician or practitioner. The agency must review and consider all such documentation supplied by the individual's personal physician or practitioner.

#### **Section 30.04. Reimbursement for Related Costs**

The Employer will pay all costs directly related to an agency-directed medical examination.

#### **Section 30.05. Release of Medical Documentation**

- (1) The Employer will provide an employee who has been ordered to undergo a fitness-for-duty examination copies of correspondence, not specifically prohibited by applicable laws, government-wide rules and regulations which the Employer has directed to the examining doctor(s). These copies will be forwarded to the employee when the Employer delivers the correspondence to the examining doctor.
- (2) Medical information concerning a mental or other condition of such a nature that a prudent physician would hesitate to inform a person suffering from it of its exact nature and probable outcome may be disclosed only to a licensed physician designated in writing for that purpose by the person or their designated representative. The employee will be notified in writing that correspondence of that nature has been provided to the doctor.

#### **Section 30.06. Psychiatric Evaluation**

The Employer shall order or offer a psychiatric evaluation to an employee only when the

employee first provides results of a general medical or psychiatric examination or the Agency had first conducted a non-psychiatric medical examination, and after review of the documentation or examination report, the Employer's physician concurs that a psychiatric evaluation is warranted for medical reasons.

## **ARTICLE 31**

### **OUTSIDE EMPLOYMENT AND ACTIVITIES**

#### **Section 31.01. Coverage**

- (1) Employees shall not engage in any outside employment or other outside activities not compatible with the full and proper discharge of the duties and responsibilities of their Government employment, whether on their own behalf, or for private individuals, firms, companies, institutions, or State or local governments. The term “Outside employment” or “activity” does not include:
- (a) Memberships in or volunteer work with, charitable, religious, social, fraternal, recreational, public service, civic, or similar non-business and non-profit organizations;
  - (b) Memberships in professional organizations;
  - (c) Performance of duties in the Armed Forces, Reserve, or National Guard; or
  - (d) Acting as an officer of a labor organization pursuant to Title VII, Section 7120 of the Civil Service Reform Act of 1978.

#### **Section 31.02. Request to Engage in Outside Employment**

- (1) Advance written approval is required to engage in outside employment or activity whether paid or unpaid. Employees shall forward a written request for approval to the Director, Human Resources Division, or Regional Personnel Officer, through supervisory channels as far in advance as possible. The written request shall include:
- (a) Outside organization or company name and address.
  - (b) Whether the outside work or activity will interfere with FNS work.
  - (c) Statement that the outside employment or activity involves no conflict of interest and that, if the employee becomes aware of a conflict of interest arising as a result of the outside employment, he/she will promptly report such conflict to the Employer.
- (2) Within ten (10) workdays, the Director, Human Resources Division or designee, or Regional Personnel Officer, will approve or deny a written request of an employee to engage in outside employment or activities.
- (3) The Director, Human Resources Division or designee, or Regional Personnel Officer, will provide written notification of reasons to the employee whose request to engage in outside employment or activities is denied.



- (4) If the Employer subsequently withdraws an approved request, the Director of Human Resources Division or designee, or Regional Personnel Officer, shall provide the employee with a reasonable period of time to take the required action.
- (5) If an employee disagrees with the Human Resources Division Director's or Regional Personnel Officer's denial of their request to engage in outside employment or activities, the employee may file a grievance at the third step within 15 workdays of the denial, in accordance with Article 50 of this Agreement.

**Section 31.03. Right to Reopen Article.**

The Parties agree that this Article may be reopened in the future, contingent upon the withdrawal of an approved request for outside employment.

## **ARTICLE 32**

### **PERSONNEL RECORDS AND ACCESS TO INFORMATION**

#### **Section 32.01. Access To Personnel Records or Information**

- (1) Employees or their personally designated representative(s) will, upon written request, have access to records or information pertaining to them with the exception of records restricted by law or Government-wide rule or regulation. Such access will take place in the presence of the individual(s) having official custody of the record(s). Before disclosure of a record is made to the employee or their personally designated representative, the identification of both must be verified. Employees must provide their prior written consent to the Employer before disclosure of their written record will be made to a designated representative or in the presence of a designated representative.
- (2) Access to personnel records of the employee by the employee and/or the authorized representative normally shall be granted within two (2) workdays of the request if such records are maintained on the premises in which the employee is located and are immediately available. If the records are not available, the Employer will initiate prompt action to obtain the records.
- (3) One copy of such documents will be furnished without cost to the employee and/or designated representative, upon written request. Charges for additional photocopies shall be in accordance with applicable laws, rules and regulations.

#### **Section 32.02. Authorized Personnel**

All information made available to authorized personnel for inspection, review or duplication shall also be made available to the employee or their representative, upon request. Information will be made available to authorized personnel only for official use as provided for in the Privacy Act of 1974.

#### **Section 32.03. Official Personnel Folders**

It is agreed that the Official Personnel Folders (OPF's) and other personnel records will be maintained in accordance with applicable laws, rules and regulations. OPF's are the property of the Office of Personnel Management, and the contents may not be removed, altered or added to, except by proper authority.

#### **Section 32.04. Release of Information by Former Supervisor**

When an employee is reassigned from one supervisor to another, information retained by the former supervisor, which is exempt from disclosure requirements of the Privacy Act, will not be released to the new supervisor or to others in the supervisory chain.

#### **Section 32.05. Union Request For Information**

- (1) The Employer will notify the Union, normally within ten (10) calendar days, whether information requested under 5 U.S.C. §7114(b)(4) will be provided. Where the Employer has notified the Union that the information will be provided, the Parties agree that time limits for filing grievances, taking grievances to later steps, or submitting bargaining proposals will, at the Union's option, be suspended until the information is delivered. The Union understands that requests for information must comply with law.

- (2) In six (6) months, but no later than one (1) year, from the effective date of this Agreement, the Agency agrees to bargain with the Union the creation of a Union profile granting “routine user” access to completed promotion action files, in accordance with the Privacy Act.

**Section 32.06. Determination to Contract Out Bargaining Unit Work**

- (1) If the Employer determines to contract out work traditionally performed by bargaining unit employees it shall provide a notice to the Union as soon as practicable, but no later than sixty (60) days in advance of contracting out:
  - (a) The bid specifications, including projected start date and the term of the contract;
  - (b) The work needed to be performed;
  - (c) The qualifications necessary to perform the work;
  - (d) The number of Agency employees needed to complete the work.
- (2) In the event that a contract has more than *de minimis* impact on the bargaining unit employees’ conditions of employment, the parties will engage in impact and implementation bargaining, upon request.
- (3) Within ten (10) days of the effective date of the contract between the Agency and an outside vendor, pursuant to 32.06(1), the Agency shall provide a copy of the applicable contract to NTEU.

## **ARTICLE 33**

### **COMMUNICATIONS**

#### **Section 33.01. Union Notification**

When the Employer presents the employee with one of the following written notices, the employee will simultaneously receive a copy of that written notice which will state on the first page in capital letters: **THIS COPY MAY AT YOUR OWN OPTION BE FURNISHED TO NTEU CHAPTER** (insert local Chapter number).

#### **Section 33.02. Application**

This Article applies to the following material:

- (a) letters of proposed disciplinary or adverse actions;
- (b) letters of final decision in any disciplinary or adverse action;
- (c) letters of advance notice or decisions to withhold a within-grade increase;
- (d) letters of a decision to impose a reduction in force;
- (e) letters of a decision to downgrade an employee's classification;
- (f) letters denying outside employment requests;
- (g) letters putting an employee on a work schedule or sick leave restriction;
- (h) letters denying an employee advance annual or sick leave;
- (i) letters in relation to unacceptable performance situations that provide a formal opportunity to improve performance; propose adverse action based on performance deficiencies; notify the employee of an unacceptable evaluation in one or more critical element; or transmit the final decision after a proposed action;
- (j) letters denying an employee's access to his/her personnel records;
- (k) letters denying a waiver of overpayment;
- (l) letters denying an employee's request for part-time employment; and
- (m) letters denying an employee's request for an alternative work schedule.

## **ARTICLE 34**

### **WAIVER OF OVERPAYMENT**

#### **Section 34.01. Requests and Criteria for Waiver of Overpayment**

- (1) An employee may request a waiver of overpayment of pay and allowances. If the overpayment involves an erroneous payment for travel, transportation or relocation expenses allowances, the request shall be sent to the Director, Human Resources Office. For all other overpayment for pay allowances, the Employer will waive the obligation to repay such overpayment under the following conditions:
  - (a) The amount of the overpayment is not more than \$1500;
  - (b) There is no reason to believe that the overpayment is the result of misrepresentation, fraud, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim; and
  - (c) The payment is not the subject of any other exception by the Comptroller General.
  - (d) The application for a waiver of overpayment has not been received later than 3 years from the date on which the erroneous payment was discovered.
- (2) If a requested waiver of overpayment is denied, the employee will be notified of any and all reasons for that denial.

#### **Section 34.02. Request for Repayment Schedule**

- (1) When an employee is not entitled to a waiver of overpayment and the employee receives an overpayment, such an employee should be permitted to repay the excess in accordance with 7 CFR, Part 3, Subpart C, and DPM Personnel Letter 550-94.
- (2) The Agency will approve an employee's request for a re-payment schedule of \$25 per pay period if the employee establishes that a repayment schedule of 15% of his/her disposable pay per pay period will result in a financial hardship.
- (3) No overpayment of \$25 or more will be collected without first providing thirty (30) days written notice of the overpayment to the timekeeper for transmittal to the employee.
- (4) If an employee has applied for a waiver of overpayment, no overpayment will be collected until the employee's application for waiver of overpayment has been decided.
- (5) If an employee terminates his/her employment with the Employer, prior to the liquidation of any overpayment described in paragraph (1) above, the Employer retains the right to satisfy any outstanding balance from any funds due and owing the employee.

## **ARTICLE 35**

### **EQUAL EMPLOYMENT OPPORTUNITY**

#### **Section 35.01. General**

The Employer and the Union agree to the principles of equal opportunity in employment for all persons; to prohibit discrimination because of age, race color, religion, sex, national origin, marital status and disabilities in personnel policies, practices and employment conditions. Employees will be free from reprisal for exercising their EEO rights.

#### **Section 35.02. Employee Participation in EEO Programs**

The Union and Employer encourage all employees to actively participate in the EEO Program. This includes such special interest activities as the Federal Women's Program, the Hispanic Employment Program, Career Enhancement (Special Placement), and other programs as are appropriate.

#### **Section 35.03. EEO Counselor Positions**

For all EEO Counselor positions not filled by merit promotion, where these duties are collateral to an employee's current position, the Union may submit a list of candidates which will be seriously considered by the Employer.

#### **Section 35.04. Meeting Space**

EEO Counselors will ensure that confidential meeting space is available for all meetings with employees.

#### **Section 35.05. EEO/Workforce Diversity Committee**

The Parties agree to establish a joint EEO/Workforce Diversity Committee, entitled the "Diversity Leaders' Council" (DLC). The Committee will be comprised of an equal number of representatives from the Union and the Employer with representatives from Headquarters and the Regions. The Committee will address such issues as assessing the workplace culture, managing/valuing diversity, and career enhancement programs, among other matters. Bargaining unit employees serving on the Committee will do so on official time and shall be selected by the Union. National NTEU and the Agency will jointly draft bylaws governing the DLC no later than ninety (90) days after the effective date of this Agreement.

#### **Section 35.06. Union Access to EEO Report**

The Employer will provide the Union on an annual basis, a statistical report prepared by the Employer's Civil Rights office, which will include the average grade of employees in each office or division by race, national origin, sex, and handicap, and the percentage of positions filled by race, national origin, sex, and handicap in each office or division. The Employer will also provide a copy of its Affirmative Action Employment Recruitment Plan to the Union.

#### **Section 35.07. Official Time**

Upon request, employees shall be entitled to Union representation and granted official time for all meetings with an EEO Counselor subject to the provisions of Article 6 of this agreement.

**Section 35.08. Reasonable Accommodation**

The Employer, pursuant to 29 CFR, will make reasonable accommodations to the known physical or mental limitations of qualified employees unless it can be demonstrated that the accommodation would impose an undue hardship on the operations of the Employer's program.

## **ARTICLE 36**

### **OFFICIAL TRAVEL AND PER DIEM**

#### **Section 36.01. Travel Outside Established Tour of Duty**

The Employer agrees to schedule travel during the regular work hours and work week of the employee, to the maximum extent practicable. Employees may travel on their own time if they so choose. The time spent traveling outside the established workday results in the travel being considered hours of work and is compensable, if it meets the appropriate provisions of Title 5 of the Fair Labor Standards Act, e.g., travel results from an event which cannot be scheduled or controlled administratively.

#### **Section 36.02. Travel During Established Tour of Duty**

If circumstances require an employee's attendance on any day at a time too early to permit travel on that day during normal duty hours of the employee, the employee may travel during normal duty hours the preceding day as authorized by their supervisor for bona fide work related reasons.

#### **Section 36.03. Return to Duty Station**

Employees at a temporary duty station who are prevented from returning during normal duty hours may return that evening, or if not to return the following day during the normal established workday as authorized by their supervisor for bona fide work related reasons.

#### **Section 36.04. Advance Notice of Travel**

If employees are required to travel, the Employer will provide employees with advance notice as soon as reasonably possible.

#### **Section 36.05. Advance of Travel Funds**

The Employer agrees that an employee traveling on official business to a temporary duty station will be given an advance of funds sufficient to cover per diem or actual subsistence expenses, mileage for use of a privately owned conveyance and other transportation expenses. Travel advances will be made available prior to the date of departure to those employees who make timely application.

#### **Section 36.06. Emergency Travel**

In cases of emergency job-related travel, subject to the approval of the authorized official, the Employer will accommodate the traveler from the impress fund or other government sources if sufficient funds are on hand to avoid having the employee use his/her own funds to cover official necessary travel expenses.



### **Section 36.07. Reimbursement of Business Related Travel Expenses**

- (1) The Employer agrees to reimburse employees when in a travel status for per diem or actual subsistence and mileage expenses incurred by them in the discharge of their official duties to the extent allowable by law.
- (2) Official travel begins when the employee leaves home, office or other authorized point of departure and ends when the employee returns home, to the office, or other authorized point at the conclusion of the workday or trip. A per diem allowance shall not be allowed for travel within the limits of the official duty station or the vicinity of the employee's home.

### **Section 36.08. Use of Private Vehicle for Official Business**

When use of a privately owned vehicle for official business is advantageous to the Employer, the employee providing such automobile will be reimbursed at the rate allowable by regulation. In no case may an employee be required to use his/her privately owned vehicle in connection with official business.

### **Section 36.09. Voluntary Return for Non-Workdays**

- (1) When an employee in travel status voluntarily returns to his/her official duty station or residence for non-workdays, the maximum reimbursement for the round-trip transportation and per diem en route shall be limited to the per diem allowance and travel expenses which would have been allowed had the employee remained at the temporary duty station. The employee shall perform any such voluntary return travel during non-duty hours or periods of authorized leave.
- (2) Employees who are required to routinely perform extended periods of temporary duty may, at agency discretion and within the limits of appropriations available for payment of travel expenses, be authorized round-trip transportation expenses and per diem in route for periodic return travel to their official duty station or residence for non-workdays.

### **Section 36.10. Illness During Travel**

Where an employee in a travel status becomes ill and is expected to remain so for any significant length of time, the Employer will pick up all normal travel expenses in connection with returning that employee to his/her normal post of duty area as promptly as possible.

### **Section 36.11. Denial of Claim for Reimbursement of Travel Expenses**

Upon request, the Employer agrees to advise the employee of the reasons for any claim for travel expenses being denied.

### **Section 36.12. Access to Travel Regulations**

A copy of official travel regulations and/or guidelines will be made accessible to employees and made available upon request. These guidelines will include the appropriate use of government credit cards. All such regulations and guidelines will be explained to employees upon request. The Employer agrees to provide the Union copies of changes to government travel regulations within a reasonable period of time after receipt.

### **Section 36.13. Travel Voucher**

Upon request, the Employer agrees to determine the status of an employee's travel voucher and provide the employee with the status and reason why a check has not been received thirty (30) days after an employee submitted his/her travel voucher to his/her supervisor.

### **Section 36.14. Field Calls**

At the discretion and with prior approval of the supervisor, employees may make the first field call(s) in the morning before reporting to the office and the last field call(s) of the day without returning to the office, when this is the most efficient manner in which to conduct business.

### **Section 36.15. Time In Travel Status Defined**

(1) Time spent traveling shall be considered hours of work for employees non-exempt from the FLSA if:

- (a) An employee is required to travel during regular working hours;
- (b) An employee is required to drive a vehicle or perform other work while traveling;
- (c) An employee is required to travel as a passenger on a one-day assignment away from the official duty station; or
- (d) An employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on non-workdays that correspond to the employee's regular working hours.

(2) Time in travel status away from the official duty station for employees exempt from the FLSA shall be deemed employment only when:

- (a) It is within his/her regularly scheduled administrative workweek, including regular overtime work; or
- (b) The travel -
  - (i) involves the performance of actual work while traveling;
  - (ii) is incident to travel that involves the performance of work while traveling;

- (iii) is carried out under such arduous and unusual conditions that the travel is inseparable from work; or
- (iv) results from an event, which could not be scheduled or controlled administratively including, travel by an employee to such an event and the return of the employee to his or her official-duty station.

## **ARTICLE 37**

### **PROHIBITED PERSONNEL PRACTICES**

#### **Section 37.01. Merit System Principles (5 U.S.C. §2301)**

- (1) The Parties mutually recognize that Federal personnel management should be implemented consistent with the following merit system principles:
  - (a) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society. Selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills after fair and open competition which assures that all receive equal opportunity.
  - (b) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age or handicapping condition, and with proper regard for their privacy and constitutional rights.
  - (c) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector. Appropriate incentives and recognition should be provided for excellence in performance.
  - (d) All employees should maintain high standards of integrity, conduct and concern for the public interest.
  - (e) The federal work force should be used efficiently and effectively.
  - (f) Employees should be retained on the basis of the adequacy of their performance. Inadequate performance should be corrected. Employees should be separated who cannot or will not improve their performance to meet required standards.
  - (g) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.
- (2) Employees should be:
  - (a) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and
  - (b) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

- (3) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidence:
- (a) a violation of any law, rule, or regulation, or
  - (b) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

### **Section 37.02. Definition**

- (1) For the purpose of this Article and in accordance with 5 U.S.C. §2302, “prohibited personnel practice” means any action described in Section 37.03 below.
- (2) For the purpose of this Article, "personnel action" means:
- (a) an appointment;
  - (b) a promotion;
  - (c) an action under Chapter 75 of the Civil Service Reform Act of 1978 or other disciplinary or corrective action;
  - (d) a detail, transfer or reassignment;
  - (e) a reinstatement;
  - (f) a restoration;
  - (g) a reemployment;
  - (h) a performance evaluation under Chapter 43 of Title 5 of the United States Code;
  - (i) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this Subsection;
  - (j) a decision to order psychiatric testing or examination; or
  - (k) any other significant change in duties or responsibilities which is inconsistent with the employee's salary or grade level.

### **Section 37.03. Prohibited Personnel Practices**

- (1) In accordance with 5 U.S.C. §2302, any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority:

- (a) Discriminate for or against any employee or applicant for employment:
  - (i) on the basis of race, color, religion, sex, or national origin, as prohibited under Section 717 of the Civil Rights Act of 1964;
  - (ii) on the basis of age, as prohibited under Sections 12 and 15 of the Age Discrimination in Employment Act of 1967;
  - (iii) on the basis of sex, as prohibited under Section 6(d) of the Fair Labor Standards Act of 1938;
  - (iv) on the basis of handicapping condition, as prohibited under Section 501 of the Rehabilitation Act of 1973; or
  - (v) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation.
- (b) Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of:
  - (i) an evaluation of the work performance, ability, aptitude or general qualifications of such individual; or
  - (ii) an evaluation of the character, loyalty, or suitability of such individual.
- (c) Coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity.
- (d) Deceive or willfully obstruct any person with respect to such person's right to compete for employment.
- (e) Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment.
- (f) Grant any preference or advantage not authorized by law, rule or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.
- (g) Appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in Title 5 of the United States Code) of such employee if

such position in the agency in which such employee is serving as a public official (as defined in Title 5 of the United States Code) or over which such employee exercises jurisdiction or control as such an official.

- (h) Take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment as reprisal for:
  - (i) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences:
    - (a) a violation of any law, rule, or regulation; or
    - (b) gross mismanagement, a gross waste of funds, an abuse of authority, or substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or
  - (ii) any disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences:
    - (a) a violation of any law, rule, or regulation; or
    - (b) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
- (i) Take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation.
- (j) Discriminate for or against an employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this Subsection shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States.
- (k) Take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning the merit systems principles contained in the Civil Service Reform Act of 1978.

#### **Section 37.04. Governing Laws, Rules and Regulations**

- (1) In accordance with 5 U.S.C. §2302, nothing in Section 37.03 above shall be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the Civil Service under:
  - (a) Section 717 of the Civil Rights Act of 1964 prohibiting discrimination on the basis of race, color, religion, sex, or national origin;
  - (b) Sections 12 and 15 of the Age Discrimination in Employment Act of 1967, prohibiting discrimination on the basis of age;
  - (c) Section 6(d) of the Fair Labor Standards Act of 1938, prohibiting discrimination on the basis of sex;
  - (d) Section 501 of the Rehabilitation Act of 1973, prohibiting discrimination on the basis of handicapping condition; or
  - (e) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

#### **Section 37.05. Right to Select Statutory Procedure or Grievance Process**

- (1) In accordance with 5 U.S.C. §7121, an employee aggrieved under this Article may raise the matter under a statutory procedure or the negotiated grievance process provided in this Agreement, but not under both.
- (2) An employee shall be deemed to have exercised his option under this Section at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a written grievance under the provisions of this Agreement, whichever event occurs first.
- (3) Selection of the grievance procedure contained in this Agreement in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to Section 7702 of Title 5 of the United States Code in the case of any personnel actions that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.



## **ARTICLE 38**

### **HEALTH AND SAFETY**

#### **Section 38.01. Occupational Health and Safety Standards**

- (1) The Employer will provide a safe and healthy working environment consistent with applicable laws and regulations.
- (2) The Employer will comply with safety and health standards issued under the Occupational Safety and Health Act of 1970 (OSHA).
- (3) When the Employer discovers a violation of OSHA standards, it shall immediately take steps to rectify the situation and notify the Union and affected employees, as soon as possible, of the condition.
- (4) The Employer recognizes that pursuant to 29 CFR Part 1960, employees shall be free from reprisal, including charge to leave, when employees decline to perform their assigned task because of reasonable beliefs that, under the circumstances, the task poses an imminent risk of death and there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures established by the Employer.

#### **Section 38.02. Hazardous Working Conditions. Health and Safety Inspections.**

- (1) Employees are encouraged to inform the Employer of any condition at the work place that poses a health or safety hazard. The Employer will take necessary steps to correct or address the hazardous condition and will notify the local Union Chapter what action has been or will be taken to correct or attempt to correct the reported condition.
- (2) The Employer will provide for annual health and safety inspections. The Employer will conduct fire and bomb drills. More frequent inspections and drills will be conducted on an as needed basis. Where the inspections and drills are outside of management's control, the Employer will encourage the building management to ensure that such inspections and drills take place. A Union official shall be afforded the opportunity to accompany the Employer or the building management on the inspection and shall be on official time.

#### **Section 38.03. Unusual Temperature Levels**

Individual employees affected by unusual levels of temperature, to the extent that they are incapacitated for duty or to the extent that continuance of duty would adversely affect their health, will be granted annual or sick leave, in accordance with this contract.

#### **Section 38.04. Health and Safety Forum**

Each region will establish a forum where health and safety issues can be addressed.

### **Section 38.05. Snow/Ice Conditions**

The Employer will request the building management to clear walkways and ramps for persons with disabilities and, if needed, salt or sand as soon as possible after a snowfall or when ice conditions exist.

### **Section 38.06. Reasonable Accommodation**

- (1) The Employer will make reasonable accommodations for employees who have a documented medical condition aggravated by the use of computer equipment (or other work assignments) in accordance with the recommendations made by medical or rehabilitation professionals.
- (2) The Employer shall provide employees who are required to use VDT equipment on the job with ergonomic furniture that meets accepted industry standards. Upon request, wrist rests will be provided to individual employees.

### **Section 38.07. High Crime Area Forum**

The Parties agree to provide a forum in which the issue of working in high crime areas may be discussed and recommendations developed.

### **Section 38.08. Evacuation Procedures**

The Employer will provide evacuation procedures for all employees including procedures for evacuating employees with physical disabilities. These procedures will be provided in an accessible format for persons with disabilities. The Union will be afforded the opportunity to bargain any changes in evacuation procedures in accordance with applicable law.

### **Section 38.09. Harmful Chemicals**

- (1) The Employer will inform the Union of harmful chemicals that will be used in its buildings, such as paint, pesticides or cleaning fluids, as soon as the Employer is aware that such chemicals will be used.
- (2) Where there is a reasonable likelihood of injury due to application of any harmful chemicals, employees will be directed to move to another work area until their area is determined safe for use.

### **Section 38.10. Union Notification of Health and Safety Accidents**

- (1) The Employer will notify the local Chapter President of any health and safety accidents involving bargaining unit employees.
  - (a) Upon request, the Employer will supply the Union with copies of any

occupational health and safety reports affecting bargaining unit employees, which are required to be filed.

- (b) Upon request, the Employer will supply the Union with copies of reports of all health and safety accidents.

#### **Section 38.11. First Aid Kits and CPR**

- (1) In each regional office and at Headquarters, the Employer will provide a first aid kit and designate a responsible person to maintain the kit. The Employer will insure that those designated to maintain first aid kits will receive training in the care and use of the kit.
- (2) At each regional office and at Headquarters, the Employer will request volunteers to be trained, at the Employer's expense, on the techniques of cardiopulmonary resuscitation (CPR) unless there is a co-located Health Unit staffed by individuals trained in CPR.
- (3) The names of all employees who are assigned first aid kits or who are trained in CPR techniques shall be posted so as to insure proper employee awareness. Before the employee is given the training referenced in this section, the employee will agree to having their name posted.

#### **Section 38.12. Procedures for Reporting and Filing Federal Worker's Compensation Act Claims**

The Employer agrees to inform employees of the proper procedures to be followed in reporting and filing claims under the Federal Worker's Compensation Act.

#### **Section 38.13. Emergency Contact**

When it becomes necessary for an employee to leave work and return home because of illness or incapacitation, the Employer will contact the individual designated by the employee to contact in case of emergency or whomever the employee wishes the Employer to contact at the time. If the employee's condition is determined to be serious, the Employer will call for emergency assistance.

## **ARTICLE 39**

### **TEMPORARILY DISABLED EMPLOYEES**

#### **Section 39.01. Light Duty Assignments. Medical Certification.**

The Employer will make every reasonable effort to provide light duty assignments for employees temporarily unable to do their regularly assigned tasks due to medical reasons, as verified by medical certification. In certain circumstances, the Employer may require a designated medical officer to verify an employee's medical condition. If the employee provides acceptable medical certification in accordance with Article 24, that they cannot carry out the alternate duties, they may request leave in accordance with this contract and/or applicable laws and regulations. This does not preclude any employee from filing an application for disability retirement or worker's compensation in accordance with applicable regulations.

## **ARTICLE 40**

### **EMPLOYEE ASSISTANCE PROGRAM**

#### **Section 40.01. Coverage.**

The Employer agrees to continue an Employee Assistance Program (program for troubled individuals for alcoholism, drug abuse, emotional illness, and other personal problems that may affect job performance).

#### **Section 40.02. Purpose**

The Parties recognize that the program is designed to address problems at an early stage when the situation may be more likely to be correctable. If an employee participates in the program, the responsible supervisory official will give consideration to this fact in determining any appropriate disciplinary action.

#### **Section 40.03. Notice, Use, and Leave Approval**

- (1) The Employer will inform the employee about and encourage the employee to utilize the EAP as soon as the Employer is reasonably aware that the employee may be experiencing a problem of the type stated in Section 40.01. Employees will be granted a reasonable amount of administrative time to see a counselor in accordance with the applicable Employee Assistance Program contract.
- (2) Employees undergoing a prescribed program of treatment and care will be granted appropriate leave in accordance with applicable law and this Agreement. The Employer agrees to assist the employee in working out a regular schedule for taking such leave provided the employee wishes to have their treatment made known to the approving official.

#### **Section 40.04. Confidentiality**

The Employer will preserve the confidentiality of the medical records of employees in accordance with law.

## **ARTICLE 41**

### **RETIREMENT/RESIGNATION**

#### **Section 41.01. Withdrawal of Resignation/Retirement Application**

An employee may withdraw a resignation or retirement application at any time prior to its effective date, provided the withdrawal is communicated in writing to the Employer. Such withdrawals will be accepted by the Employer unless the Employer has made a written commitment to fill the position of the retiring or resigning employee to any specific person or is in the process of charting a reduction-in-force.

#### **Section 41.02. Access to Union Retirement Information**

The Employer will provide to all retiring employees a package of information to be provided by the local Union Chapter.

## **ARTICLE 42**

### **TEMPORARY EMPLOYEES**

#### **Section 42.01. Purpose**

The purpose of this Article is to clarify the rights of temporary employees.

#### **Section 42.02. Non-Renewal of Appointment**

Where possible, temporary employees serving in a temporary appointment will be given two (2) weeks advance notice when their appointment will not be renewed.

#### **Section 42.03. Access to Vacancy Announcements**

Upon request, temporary employees will be mailed copies of any vacancy announcements for which they are basically eligible for a three (3) month period following a non-disciplinary or non- performance related termination.

## **ARTICLE 43**

### **PART-TIME EMPLOYMENT**

#### **Section 43.01. Definition**

For the purpose of this Article, part-time employees are those who are employed in permanent positions with a pre-scheduled tour of duty of between sixteen (16) to thirty-two (32) hours per week.

#### **Section 43.02. Criteria for Approval**

The Employer will consider employee requests to work part-time, and respond to requests in a timely manner. Requests will be in writing, contain the reasons for the change, and the duration of the part time employment period. Requests will be approved unless it is determined that the requested change would have an adverse affect on working unit's ability to function efficiently and effectively. Any denial will be in writing.

#### **Section 43.03. Coverage**

- (2) The Employer recognizes that part-time career employment may be appropriate, but in no way limited to, the following classes of employees:
- (a) Older employees seeking gradual transition into retirement;
  - (b) Handicapped individuals or others who require a reduced work week;
  - (b) Parents who must balance family responsibilities with the need for additional income; and
  - (c) Students who must finance their own educational and vocational training.

#### **Section 43.04. Benefits**

A part-time employee will receive a full-year of service credit for each calendar year worked. However, an employee must take into consideration the impact part-time employment has on their benefits. Before an employee is assigned to a part-time position, the Employer will inform him/her on the impact of the assignment in the following areas: leave earnings, health and life insurance, retirement benefits, and competitive levels for reduction in force.

#### **Section 43.05. Holidays**

When a holiday falls on a part-time employee's regularly scheduled workday, the employee will be paid for the number of hours he/she was scheduled for that day.



### **Section 43.06. Change in Employment Status**

Any person who is employed on a full-time basis shall not be required to accept part-time employment as a condition of continued employment.

### **Section 43.07. Request to Return to Full-Time Status**

An employee has no right to return to full-time status after having accepted a part-time position. However, the Employer will give serious consideration to a request to return to full time, consistent with workload and ceiling requirements. When such a request is rejected, the reasons for rejection will be explained in writing, if requested in writing.

### **Section 43.08. Job Sharing**

Job-sharing is a form of part-time employment in which the tours of duty of two (2) employees are arranged in such a way as to cover a single full-time position using flexibility in the number of hours worked and the work schedules of each partner.

- (1) The Employer will consider requests to job-share and may grant these requests based on the need for the employees' services, the suitability of the position/employees for job-sharing, availability of resources, and the impact on the efficiency of the Agency.
- (2) Employee requests to job-share must be made to the immediate supervisor(s) in writing.
- (3) It is the responsibility of the requesting employee to find a suitable partner to share a position.
- (4) If one partner leaves the program for any reason, the other partner may, absent workload demands, have forty-five (45) days from receiving written notice from the Employer to find another partner or resume full-time employment unless management has agreed to allow part-time employment arrangements.
- (5) In any job sharing arrangement, office space and equipment shall be shared. Alternatives may be considered by the Employer in unusual situations.

## **ARTICLE 44**

### **PROBATIONARY EMPLOYEES**

#### **Section 44.01. General**

The Parties recognize that new employees with the Federal Government require counseling and assistance during their probationary period. Every effort will be made to provide the probationary employee with the necessary counseling/assistance to enable the employee to demonstrate his/her ability to work successfully within the Federal work force.

#### **Section 44.02. Probationary Trial Period Report**

Prior to the end of the tenth month of the probationary period, the supervisor shall submit the probationary or trial period report to the Human Resources Office and provide a copy to the employee certifying that the employee's performance and conduct are satisfactory or unsatisfactory, and recommending that the employee be retained or separated.

#### **Section 44.03. Termination of Probationers for Unsatisfactory Performance or Conduct**

An employee's separation from the rolls under this Article must be effected before the employee has completed their probationary period. When an agency decides to terminate an employee serving a probationary or trial period because their work performance or conduct during this period fails to demonstrate their fitness or qualification for continued employment, it shall terminate their services by notifying them in writing as to the reason(s) for the termination and the effective date of the action. Such notice shall be accompanied by any material used to support the termination.

#### **Section 44.04. Termination of Probationers for Conditions Arising Before Appointment**

- (1) When an agency proposes to terminate an employee serving a probationary or trial period for reasons based in whole or in part on conditions arising before his/her appointment, the employee is entitled to the following:
  - (a) Written notice stating the reasons, specifically and in detail, for the proposed action.
  - (b) A reasonable time for filing a written answer to the notice of proposed adverse action and for furnishing affidavits in support of his/her answer. If the employee answers, the agency shall consider the answer in reaching its decision.
  - (c) Delivery of the decision at or before the time the action will be made effective. The notice shall be in writing, inform the employee of the reasons for the action, inform the employee of his right to appeal to the Merit Systems

Protection Board (MSPB), and inform him or her of the time limit within which the appeal must be submitted as provided in 5 CFR §315.806(d).

#### **Section 44.05. Right to Appeal to the Merit Systems Protection Board (MSPB)**

- (1) An employee may appeal to the MSPB in writing an agency's decision to terminate him or her under 5 CFR §315.804 or §315.805 only as provided in paragraph (2) and (3) of this Section. The MSPB review is confined to the issues stated in paragraph (2) and (3) of this Section.
- (2) A probationary employee may appeal under this paragraph a termination not required by statute which he or she alleges was based on partisan political reasons or marital status.
- (3) A probationary employee whose termination is based on conditions arising before their appointment may appeal on the grounds that his or her termination was not effected in accordance with the procedural requirements of Section 44.04 (5 CFR §315.805).
- (4) An appeal alleging a discriminatory termination may be filed under this subsection only if such discrimination is raised in addition to one of the issues stated in paragraph b or c of this Section. An employee may appeal to the Board under this section a termination which the employee alleges was based on discrimination because of race, color, religion, sex, or national origin; or age (provided that at the time of the alleged discriminatory action the employee was at least 40 years of age); or handicapping condition if the individual meets the definition of "handicapped person" as set forth in regulations of the Equal Employment Opportunity Commission at 29 CFR Part 1614.

#### **Section 44.06. Right to Appeal to Equal Employment Opportunity Commission**

- (1) Where the probationary employee believes that his termination is based solely on grounds set forth in paragraph 44.05 (2) or (4) above, the employee may pursue an appropriate appeal to the Equal Employment Opportunity Commission.
- (2) The employee elects the forum by filing an appeal, in writing, within thirty (30) calendar days of the effective date of the action with the MSPB, or by filing a discrimination complaint within forty-five (45) calendar days in accordance with agency procedures. The employee may not utilize both procedures but must elect one or the other in writing.

#### **Section 44.07. Voluntary Resignation in Lieu of Termination**

Probationary employees may choose voluntary resignation in lieu of termination at any time prior to the date of their termination. If the probationary employee voluntarily resigns, the employee's official personnel folder will reflect the voluntary resignation.

## **ARTICLE 45**

### **DISCIPLINARY ACTIONS**

#### **Section 45.01. Purpose**

- (1) Disciplinary actions will be taken for such cause as will promote the efficiency of the service.
- (2) This Article applies to bargaining unit employees who have completed their probationary period or trial period.
- (3) Disciplinary actions for purposes of this Article shall include reprimands and suspensions of fourteen (14) calendar days or less.
  - (a) The Employer will follow the general principle of progressive discipline. Disciplinary action may be preceded wherever possible by counseling and assistance of an informal nature (which may include oral admonishments confirmed in writing). The Parties recognize that certain cases may warrant severe disciplinary action irrespective of whether previous actions have been taken against the employee.
  - (b) The parties agree that discipline is fundamentally corrective, rather than punitive; in effecting progressive discipline, the employer will consider those disciplinary and conduct-based adverse actions occurring within the most recent 2 years as prior discipline. Actions that happened outside that time period may only be referenced as evidence of clear notice.
- (4) Employees shall be provided the Employees' Responsibilities, Ethics and Conduct Handbook.

#### **Section 45.02. Investigative "Weingarten" Meeting**

- (1) As noted in Article 4.05, if the Employer conducts a meeting to examine an employee in connection with an investigation, the Union shall be given the opportunity to be present if:
  - (a) The employee reasonably believes that the examination may result in a disciplinary action against the employee; and
  - (b) The employee requests representation.

#### **Section 45.03. Counseling**

- (1) Letters or Memoranda of Counseling for conduct are not disciplinary actions. They are preliminary warnings, which may be given in lieu of disciplinary action for less serious matters. Such letters are not put into the Official Personnel File.
- (2) A Letter or Memorandum of Counseling pertaining to conduct will be retained by the supervisor as an active record for a period of one (1) year. If the behavior has not been repeated in that timeframe and no other unrelated counseling records have been entered in the file, the letter will be considered an inactive record only. Employees will be informed of this time limitation on counseling records at the time counseling is conducted. Any and

all copies of these letters will be destroyed by the Employer after expiration of the designated period, or earlier, if the supervisor believes they have served their purpose.

- (3) A copy of such Letters or Memoranda of Counseling may be maintained by the Human Resources Division for historical record keeping and notice purposes.
- (4) Employees will be informed of this time limitation on counseling records at the time counseling is conducted.

#### **Section 45.04 Official Reprimands**

- (1) A Letter of Reprimand (LOR) is a formal disciplinary action. It is a written document describing the conduct giving rise to the reprimand, and provides official notice that a failure to correct the conduct, or repeated instances, shall result in more severe disciplinary action. Reprimands shall not be retained in the employee's Official Personnel Folder (OPF) for more than two (2) years from the date of issuance. The period for retention may be reduced where the employee's supervisor determines circumstances warrant a shorter period.
- (2) A copy of a Letter of Reprimand may be maintained by the Human Resources Division for historical record keeping and notice purposes.
- (3) Employees will be informed that during that two (2) year period while the LOR is in the OPF, it may be used for the purposes of progressive discipline. Once it is removed from the employee's OPF, it cannot be used for the purpose of progressive discipline; however, the LOR may be used to demonstrate clear notice regarding the misconduct.

#### **Section 45.05 Suspensions of Fourteen (14) Days Or Less**

- (1) A suspension for fourteen (14) days or less is the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay. When the Employer proposes to suspend an employee for a period of fourteen (14) days or less, the following procedures will apply:
  - (a) The employee will be given written notice stating the specific reason(s) for the proposed disciplinary action no less than fifteen (15) calendar days in advance of the action, which will include the following:
    - (i) A statement that the employee has the right to be represented by an attorney, or the Union or other representative of his/her choice.
    - (ii) A statement that the employee, and his/her representative, shall receive reasonable time to review the material relied upon to support the charges and to prepare an answer to the charges orally and/or in writing;
    - (iii) The name of the official to whom the reply is to be made, who shall be a higher ranking official than the one proposing the action; and
  - (b) A copy of all documentation upon which a proposal for disciplinary action is based will be furnished to the affected employee at the time the proposal is issued. A duplicate copy will be given to their designated representative, upon request.
  - (c) The employee will be given ten (10) calendar days, exclusive of the date of receipt of

the notice of the disciplinary action to respond orally and/or in writing to the proposed action prior to a decision being made. The reply will be made to the deciding official or his/her designee. Upon request, a reasonable time for an extension may be granted provided the request is made prior to the expiration of the 10-day reply period;

- (d) Where applicable or upon request, a summary or verbatim record of the oral reply will be made available to the employee and his/her designated representative for comment. Where an employee chooses to make an oral reply, such reply will be made at the work site of the employee, unless otherwise mutually agreed by the Parties. If the oral reply is to be made at a location other than the work site of the employee or the designated representative, the Employer will pay all the reasonable travel and per diem expenses of the employee and/or the designated representative who is an FNCS employee. The Union agrees that when selecting a representative the Union will make every reasonable effort to minimize travel costs incurred by the Employer.

#### **Section 45.06. Off-Duty Misconduct**

In cases where a Letter of Reprimand is issued or a suspension is proposed for reasons of off-duty misconduct, the Employer's written notification provided in keeping with the above sections, may also contain a statement of the nexus between the off-duty misconduct and the efficiency of the service. The notification will describe why and how there is a connection between the specific off-duty misconduct and the efficiency of the service.

#### **Section 45.07. Notice of Final Decision**

- (1) The notice of final decision will contain the reason(s) supporting the decision. In deciding what action may be appropriate, the Employer agrees to give due consideration to the relevance of any relevant mitigating and/or aggravating circumstances. The following factors, commonly known as the "Douglas Factors," listed herein for purposes of illustration, are neither meant to be exhaustive nor intended to be applied mechanically, but rather to outline the tolerable limits of reasonableness:
  - (a) The nature and seriousness of the offense, and the relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical and inadvertent, or was committed maliciously or for gain, or was frequently repeated;
  - (b) The employee's job level and type of employment including supervisory or fiduciary role, contacts with the public, and prominence of the position;
  - (c) The employee's past disciplinary record;
  - (d) The employee's past work record, including length of service, performance on the job, ability to get along with co-workers, and dependability;
  - (e) The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the Employer's confidence in the employee's ability to perform assigned duties;
  - (f) Consistency of the penalty with those imposed upon other employees for the same or similar offenses;

- (g) Consistency of the penalty with the applicable agency table of penalties;
  - (h) The notoriety of the offense or its impact upon the reputation of the agency;
  - (i) The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct of question;
  - (j) Potential for the employee's rehabilitation;
  - (k) Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment or bad faith malice or provocation on the part of others involved in the matter; and
  - (l) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.
- (2) The Employer's written decision shall state the reason(s) for sustaining the proposed action, the rationale for mitigating the proposed action, or canceling the proposed action.
  - (3) The notice of final decision will include a statement regarding the employee's right to file a grievance or an EEO complaint and provide the contacts and procedures for both.
  - (4) If applicable, a copy of the decision letter will be provided to the employee's representative

#### **Section 45.08. Right to File a Grievance**

If the Employer's final decision is to effect a suspension of fourteen (14) calendar days or less, the employee may file a grievance with the Step 3 official within fifteen (15) workdays of receipt of the final decision. Thereafter, all requirements associated with subsequent steps of the grievance procedure will apply.

#### **Section 45.09. Documentation of Disciplinary Action**

The decision notice will include a statement indicating that the suspension will be placed in the employee's e-OPF. If any disciplinary action against the employee is not sustained, all reference to such actions will be eliminated from the employee's Official Personnel Folder as soon as practicable. Upon request, a copy of any and all documentation upon which a disciplinary action is based will be furnished to the affected employee, and their designated representative. Any information not contrary to Privacy Act will be provided to the employee.

#### **Section 45.10. Maintenance of Records**

The Employer may retain records regarding disciplinary actions in accordance with retention requirements under law.

## **ARTICLE 46**

### **ADVERSE ACTIONS**

#### **Section 46.01. Scope**

- (1) This Article sets forth procedures for the processing of adverse actions against employees who have completed their probationary period. Adverse actions will be initiated by the Employer to promote the efficiency of the service.
- (2) For purposes of this Agreement, an adverse action shall include the following: suspension of more than fourteen (14) calendar days; removal; reduction in grade; reduction in pay; furlough of thirty (30) calendar days or less.
- (3) The Employer endorses the concept of progressive discipline. Disciplinary action will be preceded wherever possible by counseling and assistance, which will be informal in nature. Each situation warranting discipline must be evaluated individually and, in instances involving serious offenses, the Parties recognize that progressive discipline may not be appropriate. Major offenses may be cause for severe disciplinary action, including removal, irrespective of whether previous disciplinary or adverse action has been taken against the offending employee. Penalties will be applied in an equitable manner.

#### **Section 46.02. Advance Written Notice**

In all cases of proposed adverse actions, except as otherwise provided by applicable laws and government-wide rules and regulations, the following procedures will apply:

- (1) The employee will be given written notice stating the specific reason(s) for the proposed adverse action thirty (30) calendar days in advance of the action which will include the following:
  - (a) A statement that the employee has the right to be represented by an attorney, or the Union or other representative of his/her choice.
  - (b) A statement that the employee, and his/her representative, shall receive reasonable time to review the material relied upon to support the charges and to prepare an answer to the charges orally and/or in writing;
  - (c) The name of the deciding official to whom the reply is to be made, who shall be a higher ranking official than the one proposing the action; and
- (2) A copy of all documentation upon which a proposal for adverse action is based will be furnished to the affected employee at the time the proposal is issued. A duplicate copy will be given to their designated representative, upon request.
- (3) The employee will be given twenty (20) calendar days, exclusive of the date of receipt of the notice of the adverse action to respond orally and/or in writing to the proposed action prior to a decision being made. The reply will be made to the deciding official or his/her designee. Upon request, a reasonable time for an extension may be granted provided the request is made prior to the expiration of the 20-day reply period;
- (4) Where applicable or upon request, a summary or verbatim record of the oral reply will be



made available to the employee and his/her designated representative for comment. Where an employee chooses to make an oral reply, such reply will be made at the work site of the employee, unless otherwise mutually agreed by the Parties. If the oral reply is to be made at a location other than the work site of the employee or the designated representative, the Employer will pay all the reasonable travel and per diem expenses of the employee and/or the designated representative who is an FNCS employee. The Union agrees that when selecting a representative the Union will make every reasonable effort to minimize travel costs incurred by the Employer.

#### **Section 46.03. Notice of Final Decision**

- (1) In deciding what action may be appropriate, the Employer agrees to give due consideration to the relevance of any mitigating and/or aggravating circumstances set forth in Section 45.07(1).
- (2) The Employer's written decision shall state the reason(s) for sustaining the proposed action, the rationale for mitigating the proposed action, or canceling the proposed action.
- (3) The notice of final decision will include a statement regarding the employee's right to file a grievance, EEO complaint, or an MSPB appeal and provide the contacts and procedures for all three. The employee will be informed that they may elect only one avenue and that their election will be considered final on the date any grievance, complaint, or appeal is filed.
- (4) The decision notice will include a statement indicating that the adverse action will be placed in the employee's e-OPF.
- (5) If applicable, a copy of the decision letter will be provided to the employee's representative.

#### **Section 46.04. Optional Resignation/Retirement**

Employees will be given an opportunity to resign or, if eligible, to retire after being informed that administrative charges will be brought with a view to removal. In such situations, the employee will be granted an opportunity before the effective date to make a decision and, on request, he/she will be advised of retirement eligibility, if applicable, and given appropriate annuity figures. The employee will sign a statement indicating such resignation/retirement is voluntary.

#### **Section 46.05. Documentation of Adverse Action**

If the adverse action against the employee is not sustained after the final appeal/arbitration, all references to such action will be eliminated from the Official Personnel Folder.

## **ARTICLE 47**

### **PROCEDURES FOR HANDLING UNFAIR LABOR PRACTICES**

#### **Section 47.01. Advance Notice**

Notwithstanding the Union's right to file an unfair labor practice, the Parties, in principle, agree that it would be in the best interest of labor management relations to notify the other Party ten (10) days prior to filing an unfair labor practice. The Parties agree that reasonable efforts to address and correct misunderstandings will be addressed during the ten (10) day period.

## **ARTICLE 48**

### **LABOR-MANAGEMENT RELATIONS COMMITTEE**

#### **Section 48.01. General**

The Parties recognize that the negotiation of a formal agreement is but one element of a successful and effective Labor-Management Relations program. Therefore, the Parties agree to establish Regional and Headquarters Labor-Management Relations Committees for the purpose of exchanging information and discussing appropriate matters of concern and interest, personnel policies, practices, or working conditions.

#### **Section 48.02. Membership**

Each Committee shall normally consist of four (4) representatives of the Employer and four (4) representatives of the Union. By mutual consent this composition may be increased on either side for a particular meeting. Employee Union representatives will be on official time for these meetings, if otherwise in a duty status.

#### **Section 48.03. Meetings**

These Committees shall normally meet quarterly. Such meetings may be canceled or rescheduled by mutual agreement of the Parties. These meetings are in addition to any meetings between management officials and Union officials arising from situations demanding immediate attention.

#### **Section 48.04. Purpose**

These meetings shall not be used to discuss specific grievances, complaints or appeals but rather to discuss problems or general issues of interest. This does not, however, preclude the Parties from discussing general policies, practices or working conditions which may give rise to grievances, complaints, or appeals.

#### **Section 48.05. Agenda**

To facilitate the discussion and operation of the Committee, either Party may submit an agenda no later than five (5) workdays prior to the meeting. Such Committee meetings shall normally be held the first Friday of each fiscal quarter unless mutually agreed otherwise. The time shall be agreed upon at the submission of agenda items. The meetings will be held in a place provided by the Employer.

#### **Section 48.06. Minutes**

The Employer and the Union will alternate in preparing the minutes of the Labor-Management Committee meetings. At the conclusion of each meeting, the Party having the responsibility for preparing the minutes shall do so by including a statement of the

agenda items with a brief review of the Parties' discussion. Those proposed minutes will be forwarded to the other Party for appropriate comments. Upon mutual agreement over the contents of the minutes, a final copy of the minutes will be forwarded to each Party.

**Section 48.07. Travel and Per Diem**

The Employer will pay all reasonable travel and per diem expenses of employees who are selected by the Union to represent it at the Committee meetings or the Partnership Council meetings, however, not both.

**Section 48.08. Suspension**

Any Labor-Management Relations Committee will be suspended during the life of a corresponding Partnership Council.

**ARTICLE 49**

**EATING FACILITIES**

**(This Article is Reserved for Local Bargaining)**

**ARTICLE 50**  
**GRIEVANCE PROCEDURE**

**Section 50.01. General**

- (1) The purpose of this Article is to provide a mutually acceptable method for prompt and equitable settlement of employee grievances. Most grievances arise from misunderstandings or disputes, which can be settled promptly and satisfactorily on an informal basis at the immediate supervisory level. Every appropriate effort shall be made to adjust grievances at the lowest level. Grievances shall be filed according to the procedures set forth in this Article and the Employer shall direct the grievance to the lowest level of authority at which relief can be granted.
- (2) A grievance may be initiated by an employee, a group of employees, the Union or the Employer. It is understood that an employee processing a grievance under this Article shall be limited to Union representation or self-representation. The Parties will resolve all grievances consistent with the terms and conditions of the Agreement.
- (3) The Parties recognize that the Alternative Dispute Resolution (ADR) process is available with the mutual consent of the parties at any time in the grievance process. Either party may opt-out of the ADR process at any time. ADR proceedings shall remain confidential and all nonfactual information related to such proceeding shall not be used, or referred to, in the grievance/arbitration process.

***Note: Official time for employees and the Union to prepare for and present grievances will be in accordance with Article 6, Union Representation and Official Time.***

**Section 50.02. Scope and Coverage**

- (1) A grievance means any complaint:
  - (a) By an employee concerning any matter relating to the employment of the employee;
  - (b) By the Union concerning any matter relating to the employment of an employee; or
  - (c) By any employee or the Union concerning:
- (2) the effect or interpretation, or a claim of breach, of this Agreement; or
- (3) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

**Section 50.03. Filing a Grievance**

In as much as dissatisfactions and disagreements arise occasionally among people in any work situation, the filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, performance, loyalty, or desirability to the organization.

#### **Section 50.04. Union Observer at Grievances**

In situations where employees present grievances on their own behalf to the Employer, the Union shall have the opportunity to have an observer present at all informal and formal discussions and will normally be notified two (2) workdays in advance. The observer will take no part in the proceedings but will be allowed to present the Union's position to the Employer at a mutually agreed upon time. The employee has the right to be present during the Union presentation. All written grievance correspondence shall be provided to the Union.

#### **Section 50.05. Matters Precluded from Negotiated Grievance Procedure**

- (1) This procedure shall be the exclusive procedure for resolving all grievances except:
  - (a) any claimed violation of prohibited political activities;
  - (b) retirement, life insurance, or health insurance;
  - (c) a suspension or removal for National Security reasons;
  - (d) any examination, certification or appointment;
  - (e) the classification of any position which does not result in the reduction in grade or pay of an employee;
  - (f) the termination of a probationary employee;
  - (g) non-selection for promotion from a group of properly ranked and certified candidates from a properly certified register;
  - (h) a preliminary warning notice of an action which, if effected, would be covered under the grievance system; and
  - (i) issues previously filed under any other statutory procedure.

#### **Section 50.06. Right to Select Appeal Process**

- (1) Adverse actions and performance based actions may be raised under the appellate procedures to the Merit Systems Protection Board or the negotiated grievance procedures, but not both.
- (2) Employees shall be deemed to have exercised their option to raise a matter under any applicable statutory procedure or this negotiated grievance procedure at such time as employees timely file under any applicable statutory procedures or timely file a grievance in writing in accordance with the provisions of this Article, whichever occurs first.

#### **Section 50.07. Procedure for Resolving Disputes of Grievability/Arbitrability**

- (1) If either party timely requests a determination on the grievability or arbitrability of the grievance presented for arbitration, the requesting party will notify the opposite party and the arbitrator at least ten days in advance of the scheduled hearing on the merits. All disputes of grievability or arbitrability shall be referred to arbitration as a threshold issue in the related grievance. Questions of grievability shall be decided first. If the issue is determined not to be grievable, the grievance will terminate.

- (2) The Parties agree to make every effort to raise any questions of grievability or arbitrability of a grievance at the lowest level of the negotiated grievance procedure.
- (3) When the Employer alleges an issue is non-grievable or non-arbitrable, the Union will have five (5) workdays to amend and refile the grievance one time. It will be resubmitted at the level at which the issue was raised and proceed as a normal grievance. Where the grievance is filed and the Union or employee alleges violation of rules or regulations, the Employer agrees that it will not dispose of the grievance solely because of an incorrect reference or citation.
- (4) Consistent with Article 51, in any arbitration concerning the merits of the matter, the non-prevailing party shall pay seventy-five percent (75%) of the cost of the arbitrator and the substantially prevailing party shall pay twenty-five percent (25%).

#### **Section 50.08. Negotiated Grievance Procedure**

A grievance shall be processed as follows:

##### **Step 1**

The aggrieved employee and/or Union representative shall first present the grievance in writing to the first level supervisor. Grievances must be presented within thirty (30) calendar days from the date of the act or occurrence, or thirty (30) calendar days from the date the employee first became aware of the problem, unless the grievance is an issue covered by the terms of a statute, in which case any statutorily imposed time limits shall apply.

- (1) The grievance will contain the following information:
  - (a) Date of the grievance, name, work telephone number and signature of the grievant(s);
  - (b) Issue and description of circumstances giving rise to the grievance, including approximate time, date, and place of the incident, if available;
  - (c) If relevant, the article and section of the agreement or any rule, regulation, or law alleged to be violated;
  - (d) The remedy or relief desired; and
  - (e) Name and signature of Union representative, if applicable.
- (3) If requested, within twenty (20) calendar days of receipt of the written grievance, the supervisor will meet with the employee and/or representative. If the Parties work within the local commuting area, this meeting shall be in person; otherwise, the meeting will be by teleconference unless the Parties mutually agree to a face-to-face meeting.
- (4) The supervisor or appropriate official shall render a decision, in writing, to the employee or the representative, if one has been designated, within fifteen (15) calendar days from



the date of the step one meeting or receipt of the grievance, whichever is later. The decision will include, if the relief is denied or modified, the reason(s) for such actions, the name and location of the Step 2 official and the time limits for filing a Step 2 grievance.

## **Step 2**

- (1) If the matter is not satisfactorily settled within Step 1, the employee, and/or Union representative may, within twenty (20) calendar days from the time the reply is received or should have been received, forward the matter, in writing, to the next level supervisor. If requested, within fifteen (15) calendar days of receipt of the written grievance, the supervisor will meet with the employee and/or representative. If the Parties work within the local commuting area, this meeting shall be in person; otherwise, the meeting will be by teleconference unless the Parties mutually agree to a face-to-face meeting.
- (2) The supervisor or appropriate official shall render a decision, in writing, to the employee or the representative if one has been designated, within fifteen (15) calendar days from the date of the step two meeting or receipt of the grievance, whichever is later. The decision will include, if the relief is denied or modified, the reason(s) for such actions, the name and location of the Step 3 official and the time limits for filing a Step 3 grievance.

## **Step 3**

- (1) If the grievance is not satisfactorily settled within Step 2, the employee, and/or Union representative may, within twenty (20) calendar days from the time the reply is received or should have been received, forward the grievance to the next level supervisor for further consideration. If requested, the next level supervisor or designee will meet with the employee and or Union representative within fifteen (15) calendar days from the date the meeting was requested. If the Parties work within the local commuting area, this meeting shall be in person; otherwise, the meeting will be by teleconference unless the Parties mutually agree to a face-to-face meeting. If the Parties mutually agree, the grievant(s) and the representative shall be allowed travel and per diem expenses for the third step meeting only when otherwise in a duty status. The Employer will consider the seriousness of the issues when making this determination. The supervisor or designee shall render a decision, in writing, to the employee or the representative, if one has been designated, within fifteen (15) calendar days from the date of the Step 3 meeting or receipt of the grievance, whichever is later. The decision will include, if the relief is denied or modified, the reason(s) for such actions, and will be sent to the Chapter President.
- (2) If the grievance cites the Regional Administrator or Deputy Regional Administrator with personal violations, the grievance will be filed with the Associate Administrator at Step 3.

#### **Step 4**

- (1) If the grievance is not satisfactorily resolved at Step 3, the Union or the Employer may refer the matter to arbitration. The decision to seek arbitration shall be made within thirty (30) calendar days after the Union or the Employer receives the Step 3 written decision.
- (2) Only the Union or the Employer may invoke arbitration.

#### **Section 50.09. Grievance Alleging Discrimination**

Employees who believe they have been illegally discriminated against with regard to EEO laws, e.g., on the basis of race, color, religion, sex, genetic information, pregnancy, national origin, age, or disability have the right to raise the matter under the statutory procedure or the negotiated grievance procedure of this Agreement, but not both. Employees will have elected a forum (grievance or EEO procedure) if the grievance is reduced to writing and presented to the Employer as set forth in this Article alleging discrimination or a formal EEO complaint is filed. For grievances alleging discrimination as described above, the time limits for filing grievances shall be forty-five (45) calendar days.

#### **Section 50.10. Extension and Waiver of Time Limits. Advancement of Grievance.**

- (1) The Parties agree that, by mutual consent, the time limits contained in this Article may be extended and any step waived in writing or by electronic mail.
- (2) Failure on the part of the Agency to respond to a grievance within the appropriate time frame will entitle the aggrieved, at their option, to advance the grievance to the next step. Failure on the part of the aggrieved or the Union to respond within the appropriate time frame may be cause for cancellation of the grievance.
- (3) Upon mutual agreement of the Parties, grievances may be combined and processed as one, up to and including arbitration.

#### **Section 50.11. Request for Information**

The grievant, or his/her representative, may request the Employer to provide such written information as is relevant to the subject matter of the grievance and necessary to its resolution. If the Employer refuses to provide all necessary and relevant information, that issue may be joined with the grievance and processed to arbitration. At arbitration, the arbitrator shall review the information denied to the Union "in camera" and decide whether or not it is to be provided to the Union.

#### **Section 50.12. Filing Employer or Union Grievances**

- (1) If the Employer is aggrieved at the local or national level, its representative shall file a grievance with the local or national Union President, as appropriate, within thirty (30) calendar days of the act or awareness of the act causing said grievance. Representatives of the Parties shall meet within fifteen (15) calendar days from the date of submission of the grievance.

- (2) Within fifteen (15) calendar days of said meeting, the Union Official shall render a decision, in writing, to the Employer. If such decision fails to resolve the matter, the Employer may invoke arbitration in accordance with the procedures set forth in Article 51.
- (3) If the Union is aggrieved, the Union shall submit the grievance, in writing, to the FNS Administrator or Regional Administrator, as appropriate, within thirty (30) calendar days of the act or awareness of the act causing the grievance. Representatives of the Parties shall meet within fifteen (15) calendar days from the date of submission of the grievance. Within fifteen (15) calendar days of said meeting, the Employer shall render a decision, in writing, to the Union. If such decision fails to resolve the matter, the Union may invoke arbitration in accordance with the procedures set forth in Article 51.

## **ARTICLE 51**

### **ARBITRATION**

#### **Section 51.01. Procedure for Invoking Arbitration**

- (1) Either Party may invoke arbitration. Requests must be made in writing and either delivered by hand or postmarked no later than thirty (30) calendar days of receipt of the third step grievance decision, or when the decision should have been rendered, under the provisions of this Agreement.
- (2) The arbitration procedures shall be supported by seven geographic panels and a National Panel of arbitrators as determined by the parties at the national level. Arbitrators' names will be placed alphabetically on each list. Each party may strike up to one (1) arbitrator from the National Panel and one (1) arbitrator from the geographic panel every two (2) years during the term of this Agreement by giving notice to the other party.
  - (a) Upon receipt of notice by the other party regarding an arbitrator struck from the national or geographic panel, no further cases will be assigned to that arbitrator, but the arbitrator will hear and decide any cases already assigned. The arbitrator will be notified only after all cases already assigned to him or her have been decided or otherwise resolved.
  - (b) In replacing arbitrators or otherwise filling vacancies, the parties will request three (3) names, within the region, from the Federal Mediation and Conciliation Service (FMCS) for each vacancy. Each party may add two (2) names to the list for each vacancy. This will be done through the FMCS so that the names each party submits are not known to the other party. The parties will then alternately strike names from each list until the requisite number of names remains to fill the vacancies.
  - (c) The parties will alternate who makes the first strike for each panel vacancy. In the absence of agreement between the representatives of the parties, the Union will strike first when filling a vacancy after the implementation date of this Agreement and the Employer will strike first when the next vacancy is filled, and so forth.
  - (d) Cases will be assigned to arbitrators on each panel by invocation date. Case assignments will be made by telephone contact between the designated case assignment representatives of the parties. Hearing dates will then be scheduled by telephone contact between the designated hearing representatives of the parties.
  - (e) The parties will meet within thirty (30) days following the effective date of the Agreement to create the arbitration panels.
- (3) The Parties will arrange for a pre-hearing conference, in person or telephonically, with or without the arbitrator, to discuss possible settlement and means of expediting the hearing. During this conference, the Parties will discuss the issue(s) and reduce them to writing, exchange witness lists, determine whether any facts can be stipulated, and determine whether any documents or exhibits can be authenticated. This discussion will not prejudice which witnesses are called to testify. This will be accomplished at least five (5) workdays prior to the hearing.

- (4) The Parties shall strive for a joint submission of the issue(s) for arbitration. If this fails, each shall provide a separate submission and the arbitrator will determine the issue or issues to be heard.
- (5) In any arbitration concerning the merits of the matter, the non-prevailing party shall pay seventy-five percent (75%) of the cost of the arbitrator and the prevailing party shall pay twenty-five percent (25%). In the event that there is no substantially prevailing party, the costs of the arbitrator shall be borne equally.
- (6) The arbitrator's fees for travel and per diem allowances shall be limited by applicable laws, rules and regulations.
- (7) The arbitrator shall have authority to award reasonable attorney fees in accordance with applicable laws, rules and regulations.

### **Section 51.02. Arbitration Hearing**

- (1) Unless mutually agreed by the Parties, the arbitration hearing will be held on the Agency's premises at the most cost-effective location, as determined by the Agency, during the regular day shift hours of the basic workweek. The grievant(s), his/her Union representative, and witnesses with personal knowledge of the facts at issue and found to be necessary by the arbitrator, shall be allowed official time and travel and per diem expenses for the proceedings when otherwise in duty status. If the foregoing witnesses are not available, the arbitrator shall have authority to delay the proceedings for a reasonable period of time.
- (2) If either party timely requests a determination on the grievability or arbitrability of the grievance presented for arbitration, the requesting party will notify the opposing party and the arbitrator at least ten days in advance of the scheduled hearing on the merits of the underlying grievance. Upon mutual agreement of the Parties, such threshold issues may be submitted to the arbitrator by brief, and determined prior to the hearing. In the event no such mutual agreement is reached, a hearing will be held and concluded by an affirmative decision on the grievability or arbitrability issues presented before any hearing on the merits may convene. No hearing on the merits shall be conducted if an arbitrator has determined that a matter is not grievable or arbitrable. In any arbitration concerning the grievability or arbitrability of a matter, the cost of the arbitrator shall be borne by the non-prevailing party.
- (3) There will be no formal rules of evidence, and no pre or post hearing briefs, required in connection with the hearing, except at the behest of the arbitrator or upon mutual agreement of the parties.
- (4) Except as mutually agreed by the Parties, the arbitration hearing will be conducted as an oral proceeding with no verbatim transcript. However, either party may request a verbatim transcript at its own expense. Expenses for copies of the verbatim transcript shall be borne by the Party requesting such transcript. All testimony shall be made by oath or affirmation.
- (5) Bargaining history testimony may be introduced in arbitration, as appropriate, if notice is given to the other party no later than the pre-hearing conference.

- (6) The arbitrator shall have the obligation of ensuring that all necessary facts and considerations are brought before him/her by the representatives of the Parties in the most expeditious manner. The arbitrator shall ensure that the length of the hearing is not unnecessarily extended.
- (7) Attendance at the arbitration hearing will be limited to those persons determined by the arbitrator to have direct knowledge of the circumstances and factors of the case. The arbitrator may exclude any testimony or evidence, which he/she determines to be irrelevant or unduly repetitious.
- (8) In cases of disciplinary actions, the Parties agree that the jurisdiction and authority of the arbitrator will be confined to affirming, reversing, or mitigating the Agency's decision which may include, where appropriate, awarding back pay, or the issuance of an expungement order. The arbitrator's award shall be limited strictly to those issues presented at arbitration.
- (9) Witnesses will normally be present at the hearing only while testifying and should be permitted to testify only while in the presence of the aggrieved employee or his/her representative and the Agency's representative. The arbitrator shall have the sole discretion to determine who may testify.
- (10) The grievant's representative and all employees of the Agency who are called as witnesses, and who are on official duty status, shall be excused from duty. The amount of time spent in testifying will be charged to excused absence for employees and official time for union representatives.
- (11) Upon submission of reasonable proof to the arbitrator that a witness, who has personal knowledge of the facts involved cannot be physically present, the arbitrator may accept a sworn affidavit or testimony via teleconference. The arbitrator will accord such weight to this type of evidence as the circumstances warrant. Copies of the affidavits shall be made available to all Parties concerned.
- (12) Once the date for arbitration has been established, any party that unilaterally requests that an arbitration hearing be postponed, delayed, canceled, and/or withdrawn for whatever reason, which results in any fees being charged by the arbitrator, shall pay all such fees.
- (13) The arbitrator shall be bound by the provisions of this Agreement and applicable laws, rules and regulations.
- (14) The Parties have the right to issue opening and closing statements; to present and cross-examine witnesses, and to submit actual copies of applicable case law such as relevant arbitration and court decisions.
- (15) The arbitrator shall have no authority to add to, subtract from, or modify any terms of this Agreement.
- (16) The arbitrator may issue a bench decision at the hearing, but in any event, the arbitrator will be requested, at the hearing, to render a decision as quickly as possible but, not later than twenty (20) workdays after the conclusion of the hearing, unless the Parties mutually agree to extend the time limit.

### **Section 51.03. Arbitration Award. Filing Exceptions to Arbitration Award**

- (1) The arbitrator's award shall be binding on the Parties. Any dispute over the application of the award shall be returned to the same arbitrator for clarification. The arbitrator shall possess the authority to make an aggrieved employee whole to the extent that such remedy is not limited by law, including the authority to award back pay, reinstatement, attorney fees, where appropriate, and to issue an order to expunge the record of all references to a disciplinary, adverse or unacceptable performance action, if appropriate.
- (2) Either party to arbitration under this Article may file with the Federal Labor Relations Authority, an exception to an arbitrator's award under regulations prescribed by the Authority, as provided for by applicable laws, rules and regulations.

### **Section 51.04. Expedited Arbitration - General**

The Parties agree that grievances on the following issues may be arbitrated using an expedited procedure, unless both Parties agree to refer the matter to the regular arbitration procedure. The parties agree that the purpose of the expedited arbitration procedure is to remedy immediate harm to the employees. Further, the Parties may agree to include any subject not listed below.

- (a) Suspensions of seven (7) calendar days or less;
- (b) Denials of annual, sick or administrative leave or leave without pay;
- (c) Parking;
- (d) Performance appraisals;
- (e) Overtime;
- (f) Dues withholding;
- (g) Denials of any reasonable time Union representatives may be entitled to under this contract;
- (h) Involuntary reassignments that involve a change in duty station;
- (i) AWS disputes;
- (j) Denials of outside employment requests; and
- (k) Denials or termination of Telework Agreements.

### **Section 51.05. Process for Requesting Expedited Arbitration**

- (1) Either Party may request expedited arbitration regarding a subject as detailed above. Requests must be made in writing and either delivered by hand or postmarked no later than fifteen (15) workdays from receipt of the third step decision. Failure to request expedited arbitration in this time frame will cause a case to default to normal arbitration process.
- (2) Unless either Party asks for a delay, the arbitrator will conduct the hearing within fifteen (15) calendar days after being notified of his/her selection. Each Party may request and receive one delay in the hearing date.

- (3) Procedurally, in all matters except timelines, expedited arbitration will proceed in the same fashion and observing the same agreed-upon rules as arbitration.



## **ARTICLE 52**

### **DUES DEDUCTION**

#### **Section 52.01. Purpose and Coverage**

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

- (a) be a member in good standing of the Union;
- (b) be an employee of the bargaining unit covered by this Agreement;
- (c) have voluntarily completed Standard Form 1187 (SF-87), "Request and Authorization for a Voluntary Allotment of Compensation for Payment of Employee Organization Dues"; and
- (d) have a regular net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues.

#### **Section 52.02. Certification and Remittance Procedures**

Certification and remittance procedures shall be as follows:

- (a) dues will be wire transferred to the bank account designated by the Union;
- (b) dues tapes will be mailed to the Administrative Controller, National Treasury Employees Union, Suite 600, 901 E Street, NW, Washington, DC 20004; and
- (c) the Union's National President or any Chapter officer who has submitted proper notification to the servicing personnel office is authorized to make the necessary certification of SF-1187.

#### **Section 52.03. Union Responsibilities**

The Union will:

- (a) inform and educate its members on the voluntary nature of the system for allotment of Union dues, including the condition under which the allotment may be revoked;
- (b) purchase and distribute to its members SF-1187;
- (c) inform the Employer of changes in the certification and remittance procedures;

- (d) forward properly executed and certified SF-1187's to the employee's servicing personnel office on a timely basis;
- (e) forward an employee's revocation (SF-1188), "Revocation of Voluntary Authorization for Allotment of Compensation for Payment of Employee Organization Dues" to his/her servicing personnel office when such revocation is submitted to the Union;
- (f) inform the employee's servicing personnel office of the name of any participating employee who has been expelled or ceases to be a member in good standing in the Union within ten (10) days of the date of such final determination;
- (g) inform the Employer of any change in the formula for membership dues; and
- (h) return magnetic reel tapes and protectors to the National Finance Center as soon as possible.

#### **Section 52.04. Employer Responsibilities**

The Employer is responsible for processing voluntary allotment of dues in accordance with the article. The Employer will:

- (a) upon receipt of a properly certified SF-1187, have its personnel office stamp the date received legibly on the back of all copies (if the date received is not stamped legibly or written legibly on the NTEU copy, the SF-1187 will be considered received by the personnel office on the date it is signed by the employee);
- (b) withhold dues on a biweekly basis;
- (c) provide biweekly, within six (6) calendar days of the close of a pay period, sufficient magnetic tape reels containing the information on the Record Format, Record Format Positions, and the total gross amount deducted for all employees, the total amount of prescribed costs retained, and the net amount remitted;
- (d) discontinue allotments when required by OPM rules and regulations;
- (e) notify the employee and the Union when an employee is not eligible for an allotment, along with the reasons for the decision;
- (f) withhold new amounts of dues upon certification from the Union's National President provided that the formula for withholding has not been changed during the past twelve (12) months;
- (g) transmit dues by remittance checks or by Electronic Funds Transfer (EFT) to the allottee designated by the Union;

- (h) transmit magnetic tape reels to the Union or its designee;
- (i) stamp on a properly executed SF-1188, the data received and transmit it to the NFC so that the revocation will be effected consistent with provisions outlined in Section 52.03 of this article;
- (j) provide local Union chapters a listing of SF-1188's within seventy-two (72) hours after receipt; and
- (k) adjust the total error in the amount of dues withheld from individual employees as soon as practicable after the Employer has discussed or has received written notification from the Union. The Union will be informed of the amount to be withheld from each employee's pay to cover the underpayment. When the total amount owed by the employee is less than twenty-five (\$25) dollars, the entire amount will be withheld in one (1) pay period, to the extent it does not exceed fifteen (15) percent of disposable pay. When the total amount owed by an employee is more than twenty-five (\$25) dollars, the deductions will be made in accordance with the Debt Collection Act. The employee will be given the notice required by the Debt Collection Act of 1982 as implemented in 31 CFR Part 5, Subpart B.

#### **Section 52.05. Termination of Allotments**

It is agreed that allotments will be terminated:

- (a) when an employee ceases to be a member in good standing of the employee organization;
- (b) if the employee organization loses exclusive recognition for the covered unit;
- (c) if the employee is reassigned or promoted from the unit for which the Union has been accorded exclusive recognition; and
- (d) when the allotter is separated from the Federal service.

#### **Section 52.06. Effective Dates**

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

- (a) The SF-1187 will be entered into the payroll system as soon as practical but no later than the pay period following receipt of the SF-1187 in the local personnel office.
- (b) Upon reasonable administrative changes in the formula for dues, withholding will begin the first pay period designated by the Union's National Office.
- (c) Revocation notices for employees who have had dues allotments in effect for more than one (1) year must be submitted to the payroll office during USDA

pay period 15 each year. Revocations will become effective during USDA pay period 18. Revocations may only be effected by submission of a completed SF-1188 that has been initialed by the Chapter President or his designee. If the SF-1188 is not initialed, the Employer shall return the SF-1188 to the employee and direct the employee to the proper Union official for initialing. To revoke such dues withholding, employees must have had dues withheld for at least one year.

- (d) Revocation notices for employees who have not had dues allotments in effect for one (1) year must submit the revocation notice within one month before the employee's anniversary date of their dues allotment. Revocations may only be effected by submission of a completed SF-1188 that has been initialed or signed by the chapter president or his or her designee. If the SF-1188 is not initialed or signed, the Employer shall return the SF-1188 to the employee and direct the employee to the proper Union official for initialing. The SF-1188 will become effective the first full pay period after the employee's anniversary date.
- (e) Termination due to loss of membership in good standing will be effective on the beginning of the first pay period after the date of receipt of notification by the Employer.
- (f) For termination due to separation or movement out of the exclusive unit a final deduction will be made for that pay period in which the action is effective.

#### **Section 52.07. Back Pay Award**

The Employer will deduct Union dues from an employee's back pay award when the employee has an allotment for dues withholding in effect at the time of the action giving rise to the back pay.

#### **Section 52.08. Biweekly Dues Tapes**

The Employer's biweekly dues tapes will include the following information:

- (a) whether the employee retired, separated, or moved out of the bargaining unit;
- (b) whether the employee is continuing to be carried in non-duty status, if applicable;
- (c) whether the employee is full time, part time, seasonal, intermittent, term, temporary, permanent, or career conditional, if applicable;
- (d) the geographic locality of each employee that is used to determine the appropriate locality pay; and
- (g) the adjusted base pay of each employee, his or her grade and step, pay structure (for example, general schedule or wage grade, etc.), and the total dues withheld broken down by national dues withheld, local dues withheld, and the total dues withheld.

**Section 52.09. Discretionary Allotments**

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

## **ARTICLE 53**

### **MIDTERM NEGOTIATIONS**

#### **Section 53.01. Coverage**

This Agreement shall provide for mid-term negotiations when during the thirty (30) day period beginning with the eighteenth (18<sup>th</sup>) month and ending with the beginning of the nineteenth (19<sup>th</sup>) month after the effective date of this Agreement, either Party may reopen negotiations up to four (4) Articles. For any Article that both parties mutually agree to reopen, each party may reopen an additional Article. The request must be in writing and shall be accompanied by specific proposals. The Parties shall begin negotiations no later than sixty (60) days after the first day of the eighteenth (18<sup>th</sup>) month. Negotiations shall not exceed fifteen (15) consecutive workdays in duration. The Employer shall pay up to five (5) days per diem and travel costs for an FNS employee to participate in these negotiations. The Parties may agree on mutually satisfactory arrangements for the conduct of these negotiations. Where they cannot agree, these negotiations will be conducted in accordance with the ground rules described below for mid-contract negotiations.

#### **Section 53.02. Notification of Changes in Personnel Policies, Practices, or Conditions of Employment. Contract Amendment.**

- (1) The Employer agrees not to unilaterally establish or change any personnel policy, practice or condition of employment which terminates or conflicts with specific terms or conditions of this Agreement. However, amendments to this contract may be required after the effective date of this Agreement because of new laws, or changes to existing laws. In such an event, the Parties shall meet within fifteen (15) workdays after receipt of a written request from either Party for the purpose of negotiating those amendments to the Agreement required to bring this Agreement into conformity with changes in law. The Parties shall agree on mutually satisfactory arrangements for the conduct of these required negotiations. Where they cannot agree, these negotiations will be conducted in accordance with the ground rules described below for normal mid-contract negotiations.
- (2) Where the Employer wishes to change a personnel policy, practice or condition of employment not controlled by the terms of this Agreement or where there is a change in law as described in subsection (1) above, and where the change affects more than one FNCS region, it will notify the Union's National Office with a copy provided to the local Union chapter. Where the change affects one FNCS region, notice will be provided to the affected Chapter President with a copy to the NTEU Field Representative and the NTEU National Negotiator.
  - (a) The Employer shall provide the Union with reasonable advance notice, but normally not less than fifteen (15) workdays, of the intended changes. The notice will include the following:
    - (i) A description of the desired change;
    - (ii) An analysis of the impact of this change on the bargaining unit;
    - (iii) An explanation of how this change will be implemented; and

- (iv) An explanation of why the proposed change is necessary.
- (b) The Union will have fifteen (15) workdays in which to invoke its right to negotiate over the requested changes.
  - (i) Where the Union wishes to negotiate over the requested change, the Employer will delay the implementation of such change until that time when the Parties have reached agreement on the proposed change unless required by law to implement prior to reaching agreement.
  - (ii) The Union agrees that the Employer has the right to implement necessary changes in laws or in personnel policies, procedures and practices affecting the terms and conditions of employment after notice and an opportunity to negotiate have been afforded to the Union, if the Union fails to request the negotiations.

### **Section 53.03. Ground Rules for Midterm Negotiations**

- (1) The following ground rules shall govern the conduct of midterm negotiations:
  - (a) The Employer will provide a site for negotiations.
  - (b) Negotiations shall take place during the regular administrative workday of the office where negotiations are taking place.
  - (c) An employee representing the Union under this Article shall be authorized official time for such purposes during the time the employee otherwise would be in a duty status. The bargaining teams shall be limited to four (4) members for each Party unless the Parties mutually agree otherwise. In addition, the Union bargaining team may include an NTEU staff member. Midterm negotiations may be expanded to include advisors for each Party.
  - (d) The Employer shall pay travel and per diem costs allowed by applicable laws, rules and regulations, which are incurred by the employee negotiators. The Parties agree that every reasonable effort will be made wherever possible to avoid travel and per diem costs by utilizing such alternative methods such as conference calls.

### **Section 53.04. Process for Declaring Impasse and Requesting Assistance of the Federal Mediation Conciliation Service**

Upon certification by the Federal Mediation and Conciliation Service of an impasse between the Parties in connection with mid-contract or midterm negotiations, either Party can appeal to the Federal Services Impasses Panel and may request arbitration. The Impasses Panel representative shall notify both Parties simultaneously of any information, procedures or decisions relating to the issue. If one of the Parties invokes the Impasse provisions, the Employer shall postpone the implementation of any change until the impasse is resolved, unless the law requires implementation prior to a decision by the Impasses Panel.

**Section 53.05. Midterm Agreements, Memorandums of Understanding and Amendments. Waiver of Time Limits.**

- (1) Except as provided in Subsection (2) below, a midterm agreement or an amendment shall be incorporated into this Agreement. It shall be effective, upon signing, by both Parties, unless otherwise specified, subject to the final review and approval of the Agency head. The Parties may mutually agree to waive any of the time constraints set forth in this Article.
- (2) Agreements applicable to only a single work site or entity shall normally be in the form of a Memorandum of Understanding. Copies of each approved Memorandum of Understanding shall normally be filed with the Chapter President, and the labor relations office, and shall be viewed by the Parties as supplements, rather than amendments to the Agreement. Accordingly, they shall not necessarily run for a term concurrent with that of the Agreement, but instead may be for whatever duration is appropriate, but not beyond the term of this Agreement.



## **ARTICLE 54**

### **PUBLIC TRANSPORTATION SUBSIDIES AND PRE-TAX PARKING BENEFITS**

#### **Section 54.01. Transit Subsidy Payments**

The Employer agrees to pay a public transit subsidy to those FNCS employees who use public transportation. The Employer will offer a monthly subsidy for all of those employees who commute to work by public transportation, or a vanpool that meets the IRS eligibility requirements for qualified transportation fringe benefits set forth in 26 CFR Parts 1 and 602. The amount of the subsidy is dependent on an employee's actual commuting costs and cannot exceed the actual costs incurred. Employees may be required to provide proof of their expenses for the purposes of participating in the subsidy program.

#### **Section 54.02. Maximum Allowable Monthly Transit Subsidy**

The Employer agrees to provide the maximum allowable monthly transit subsidy and pre-tax parking benefits for all National Capital Region (NCR) and non-NCR qualifying employees. In the event that the maximum allowable amount increases or decreases in the future, all qualifying employees shall be entitled to the same maximum allowable amount, adjusted for inflation.

#### **Section 54.03. Parking Passes**

The Employer will demand that employees who receive the subsidy relinquish any parking passes or parking subsidies that they currently retain. Furthermore, the Employer will request that employees certify their use of public transportation, as well as the actual costs of the transportation.

#### **Section 54.04. Creation of Forms and Applications**

The parties will work together to develop the application forms and procedures to be utilized for the FNCS transit subsidy program. The existing OPM Fare Subsidy Program will be reviewed to help determine the structure and procedures for the FNCS program.

#### **Section 54.05. Information on Transit Subsidies and Pre-Tax Parking Benefits**

The Employer shall maintain current information on Newsstand for the dates of quarterly distribution and the annual renewal period. In the event FNCS receives the information from USDA less than 30 days in advance of distribution, the Employer will post the information on Newsstand within 3 days of receipt.

#### **Section 54.06. Pre-Tax Parking Benefits**

- (1) Pre-tax parking is authorized for eligible employees to exclude certain parking expenses from their taxable income. This benefit is provided by Executive Order 13150, 26 CFR Part 1.132.9, and 5 U.S.C. § 7905.
- (2) An employee is eligible if:
  - (a) She/he either takes mass transportation, rides in a vanpool, or in a carpool of two or more persons from the parking location to work.
  - (b) She/he parks at eligible parking locations:

- (i) A metro-parking lot, commercial lot, privately owned parking lot, parking garage, parking meter, or employer provided parking.
- (3) Eligible employees should submit an application to their designated transit subsidy coordinator. The transit subsidy coordinator will submit the approved application to the servicing personnel office for inputting into the National Finance Center personnel/payroll system.
- (4) Eligible employees can receive both the transit subsidy and pre-tax parking benefits.

**Section 54.07. Retroactive Transit Subsidies and Pre-Tax Parking Benefits**

This Section shall apply when any legislation, law, and/or departmental regulation entitles an employee to a retroactive transit subsidy and/or pre-tax parking benefit and that employee's incurred transit/parking costs were greater than the previous maximum allowable benefit. In such circumstances, such employee shall be reimbursed from the retroactive date to the present for the difference between the employee's incurred transit/parking costs during this period and the previous maximum transit subsidy/parking benefit amount, up to the difference between the previous and retroactive benefits. The incurred transit/parking costs shall be based upon the employee's reported commuting/parking costs for this time period on her/his transit subsidy/pre-tax parking application form. This amount shall be distributed within ninety (90) days of the enactment of such legislation, law, and/or departmental regulation or the timeframe established therein. In the event that the Agency lacks authorization to distribute by this time, it shall meet and confer with the Union within ninety (90) days of the enactment.

**ARTICLE 55**  
**CHILD CARE SUBSIDY PROGRAM**

**Section 55.01. General**

The Employer shall establish a Child Care Subsidy Program (Program) in accordance with the terms of the National Agreement, subject to budgetary considerations. The intent of the Program will be to make child care more affordable for lower income employees whose children are, or will be, enrolled in licensed home-based or center-based child care provider.

**Section 55.02. Establishing Program**

The Employer will take the necessary steps to ensure the Program is established and operational not later than one (1) year following the effective date of this Agreement, subject to budgetary constraints.

**Section 55.03. Publication**

The Employer will publicize the availability and characteristics of the Program on its Intranet site.

**Section 55.04. Program Characteristics**

- (1) All full and part-time employees who meet all of the following requirements are eligible to participate in the Program and receive a monthly subsidy in accordance with this Article:
  - (a) Total household income (based on Adjusted Gross Income on the prior year's tax return(s)) is \$70,000 or less;
  - (b) Has (or is the legal guardian of) a child or children age thirteen (13) or younger (age eighteen (18) or younger if the child is disabled); and
  - (c) Uses a home-based or center-based child care provider that is licensed or regulated by state and/or local authorities in the state or locality in which the provider operates;
- (2) The amount of the subsidy provided under this Program shall not exceed \$5,000 per calendar year.
- (3) In the event both parents (or legal guardians) work for Federal government agencies offering a child care subsidy program, the Employee must select only one of the programs in which her/his family will participate (not both).
- (4) The monthly subsidies paid by the Employer will be calculated based on a percentage of the total household income according to the following formula:
  - (a) \$45,000 and below – 100%
  - (b) \$45,001 - \$60,000 – 75%
  - (c) \$60,001 - \$70,000 – 50%

For example, an employee who qualifies for a subsidy under 55.04(4)(b), will receive a maximum \$3,750.00 subsidy per year.

### **Section 55.05. Program Application Procedures**

- (1) The Employer will establish Program application procedures in a manner that permits eligible employees to apply to participate in the program at any time.
- (2) At a minimum, the Employee's application will include:
  - (a) Child Care Subsidy Application (OPM Form 1643), completed by the employee;
  - (b) Child Care Provider Information For the Child Care Subsidy Program for Federal Employees (OPM Form 1644), completed by the child care provider;
  - (c) A copy of the most recent signed and dated Federal Income Tax Return. For married employees who filed separately, this includes a signed and dated copy of the spouse's Return.
  - (d) A copy of the most recent Wage and Tax Statement (Form W-2) for both parents (or legal guardians), if applicable;
  - (e) A copy of the two most recent Leave and Earnings Statements (or equivalent) for both parents (or legal guardians), if applicable;
  - (f) A copy of the employee's most recent Notification of Personnel Action (Form SF-50);
  - (g) A copy of the child(ren)'s birth certificate;
  - (h) A copy of the child care provider's license;
  - (i) A copy of child care provider's schedule of fees; and
  - (j) Proof of enrollment of the child(ren) in the child care facility.

### **Section 55.07. Application Approval**

The Employer will approve applications submitted by eligible employees that are complete and meet the criteria contained in applicable law and regulation, and the terms of this Agreement. On an annual basis, participating employees must submit an updated application for approval/recertification.

### **Section 55.08. Disapproval Notification**

The Employer will notify the employee in writing as to whether her/his submitted application is approved, and if disapproved, the reasons for the disapproval.

### **Section 55.09. Payments**

Once approved by the Employer, monthly subsidy payments under this Program will be made directly to the child care provider based on services actually rendered. The Employer will make such payments when it receives the monthly invoice from the employee no later than the last day of the month following the month for which payment is requested (e.g., to obtain subsidy for services rendered in February, the employee must provide the invoice no later than March 31st).

### **Section 55.10. Changes Affecting Eligibility Criteria**

In the event that an employee no longer meets the eligibility criteria or the employee's household income changes the monthly subsidy amount to be paid, the employee will notify the Employer immediately of the circumstances in writing. The employee will be responsible

for reimbursing the Employer for any overpayment resulting from the employee's delay in notifying the Employer.

**Section 55.11. Changes to Child Care Provider**

If an employee changes her/his child care provider, she/he must notify the Employer of such by completing the appropriate paperwork.

**Section 55.12. Income Tax Consequences**

Employees are responsible for determining and addressing all income tax consequences relating to the receipt of a subsidy under this Program.

## **ARTICLE 56**

### **DURATION AND TERMINATION**

#### **Section 56.01. Effective Date of Agreement**

The Parties to this Agreement shall meet and sign the Agreement on the first workday following the ratification of the Contract. It shall become effective on the date it is approved by the Director of Personnel of the Department of Agriculture or thirty (30) days after signing.

#### **Section 56.02. Duration of Agreement**

This agreement shall remain in effect for a period of three (3) years from its effective date and shall be automatically renewable for an additional one (1) year period unless either Party notifies the other Party, in writing, at least sixty (60) days, but not more than 105 days prior to the expiration date of its intention to reopen, amend, modify, or terminate this Agreement. The Parties will agree on mutually satisfactory ground rules for the conduct of these negotiations. This Agreement shall continue in full force until a new Agreement has been approved.

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### FOOD, NUTRITION AND CONSUMER SERVICES (FNCS)

#### INDIVIDUAL TELEWORK AGREEMENT

This document constitutes the Telework Agreement between the U.S. Department of Agriculture (USDA), Food, Nutrition and Consumer Services (FNCS, Agency or Employer) and the employee named herein.

#### EMPLOYEE INFORMATION:

Name:

Last	First	MI
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Title: \_\_\_\_\_ Series/Grade: \_\_\_\_\_

Organization: \_\_\_\_\_

Office Location: \_\_\_\_\_  
Street City State

Date Request Submitted: \_\_\_\_\_ [Employee Initial: \_\_\_\_\_]

Date Rec'd by Supervisor: \_\_\_\_\_ [Supervisor Initial: \_\_\_\_\_]

*Upon receipt of a request for telework, the supervisor and the employee should meet to discuss and review the request. The supervisor's decision is to be provided to the employee within ten (10) workdays of the request. This time frame may be extended by mutual agreement of the employee and supervisor. If the request is approved, the supervisor should ensure that the Tour of Duty Form conforms to the approved telework schedule. Bargaining unit employees should refer to their Collective Bargaining Agreements for provisions governing telework (NTEU, Article 20; AFG, Article 16).*

#### 1. Telework Work Schedule

The employee is approved to work at the approved alternative worksite(s) specified below in accordance with the following schedule:

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Week 1	Office	Alternative Worksite	Week 2	Office	Alternative Worksite
Mon			Mon		
Tue			Tue		
Wed			Wed		
Thurs			Thurs		
Fri			Fri		

Total number of days teleworking each pay period: \_\_\_\_\_

### 2. Alternative Worksite

The employee's alternative worksite is (check one):

\_\_\_\_\_ **HOME**

Address: \_\_\_\_\_  
Street Apt #

\_\_\_\_\_  
City State Zip Code

Location of home office work area: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Direct Home Phone Number: \_\_\_\_\_

Home Fax Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

\_\_\_\_\_ **GSA TELECENTER**

Address: \_\_\_\_\_  
Street Suite #



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\_\_\_\_\_  
City State Zip Code

Direct Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

### \_\_\_\_ OTHER APPROVED ALTERNATIVE WORKSITE

Location Name: \_\_\_\_\_

Address: \_\_\_\_\_  
Street Suite #

\_\_\_\_\_  
City State Zip Code

Direct Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

### 3. Transit Subsidy Reduction

#### CURRENT COMMUTE WITHOUT TELEWORK AGREEMENT:

Daily Commute Mileage: \_\_\_\_\_

Current Monthly Transit Subsidy: \$\_\_\_\_\_

#### COMMUTE WITH TELEWORK AGREEMENT:

Daily Commute Mileage: \_\_\_\_\_

Predicted Monthly Transit Subsidy: \$\_\_\_\_\_

Proposed Date of Adjustment in Transit Subsidy: \_\_\_\_\_.

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### **4. Voluntary Participation**

*Employee participation in telework is voluntary.*

### **5. Dependent Care**

*The employee acknowledges that telework is not a substitute for dependent care.*

### **6. Work Assignments and Performance**

*The fact that an employee is teleworking must be seamless to the customer. Employees must be continuously available to supervisors, customers, and co-workers while working from an alternate site. Out-of-office messaging is to be used to indicate extended periods of unavailability and alternative contacts.*

*The employee is required to satisfactorily complete all assigned work, consistent with the approach adopted for all other employees in the work group, and according to standards and guidelines in the employee's performance plan.*

### **7. Time and Attendance**

*Time spent in a telework status must be accounted for and reported in the same manner as if the employee reported for duty at the official duty station or FNCS office site.*

### **8. Overtime, Credit Hours and Compensatory Time**

*The employee agrees to follow agency procedures regarding the request and approval of overtime, credit hours and compensatory time worked while in a telework status.*

### **9. Official Duty Station**

*The employee's official duty station for such purposes as special salary rates, locality pay adjustments, and travel is the city or town, county, and state as documented on the employee's SF-50. For most employees, this will be the location of the employee's worksite, i.e., the place where the employee normally works, or at which the employee's activities are based, as determined by the supervisor and OPM regulations.*

### **10. Work Area**

*For work-at-home arrangements, the employee is required to designate one area in the home as the official work or office area that is suitable for the performance of official government business. The government's potential exposure to liability is restricted to*

## **ATTACHMENT A**

*this official work office area, which the employee has the obligation to safely maintain. Employees will self-certify as to the adequacy and safety of the designated work area.*

### **11. Equipment and Supplies**

*Employees may receive reimbursement for official business expenses as set forth in the collective bargaining agreement.*

*The Agency is responsible for obtaining software licenses that are used on Employee Owned Equipment (EOE) for official business. When EOE is no longer used, it is the responsibility of the employee to remove and return all government-owned software to the agency software manager. Questions and concerns regarding equipment and software are to be directed to the Office of Information Technology.*

### **12. Safekeeping of Government Data, Information and Equipment**

*Teleworking employees must abide by the policies and procedures described in the FNCS "Guidance on Sensitive but Unclassified (SBU) and Personally Identifiable Information (PII)" and any revisions thereto, and, if represented by NTEU, the parties' Memorandum of Understanding (MOU) Concerning Implementation and Impact of the Agency's Sensitive but Unclassified (SBU) Information Policy," (executed March 23, 2007).*

### **13. Service and Maintenance of Telework Equipment**

*Employees will ordinarily be given a minimum of 24 hours advance notice of a visit regarding management service or maintenance of government-owned property. Such service or maintenance will occur during the employee's normal work hours unless circumstances dictate otherwise. The employee is also responsible for returning agency-owned equipment to the official duty station when discontinuing the telework schedule or when any maintenance or repair is required. FNS will not be responsible for repairs, replacement, upgrades or other related expenses involving employee-owned equipment.*

### **14. Workers' Compensation and Other Liabilities**

*While at an alternative work site, an employee who is directly engaged in performing the duties of their job is covered by the Federal Employees Compensation Act. The employee must notify the supervisor in accordance with law and regulation of any accident or injury at the alternative work site, provide details of the accident or injury, and complete Department of Labor Form CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation.*

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*The government is not liable for damages to the employee's personal or real property while the employee is working at the approved alternative worksite, except to the extent the government is liable under the Federal Tort Claims Act or the Military and Civilian Employees Claims Act.*

*An injured employee, medically able to return to work from an alternative work site, may use telework arrangements to return to work as soon as possible.*

### **15. Tax Benefits**

*Generally, an employee who uses a portion of his or her home for work does not qualify for any Federal tax deductions. However, employees should consult their tax advisors or the Internal Revenue Service for information on tax laws and interpretations that address their specific circumstances.*

### **16. Recall**

*Employees participating in the telework program must be accessible and available for recall to their regular offices for work needs that cannot or cannot most effectively be performed at the alternate worksite.*

*FNCS will take full advantage of technology to support seamless telework and to minimize the need for recall.*

*A recall shall last no longer than is reasonable to complete the task or purpose of the recall. Management will provide reasonable advance notice of all recalls. Notice of recall will be provided to bargaining unit employees in accordance with the collective bargaining agreement. Recalled employees are required to report as directed, as agreed or as soon as reasonably possible.*

### **17. Temporary and/or Emergency Closure**

*Subject to Office of Personnel Management guidance, in the event of a government-wide shutdown, telework employees will be excused from work for the duration of the shutdown to the extent they are not scheduled and able to work. In the event of a government shutdown, particularly in the local commuting area due to inclement weather, telework employees will continue to work for the duration of the shutdown, unless otherwise directed.*

*If work is disrupted at the official duty station (e.g., by power outages, fire, earthquake, flood, equipment failure, etc.) and employees are excused, telework employees will complete the workday unless the disruption or the effect of the disruption extends to the alternative work site.*

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*If work is disrupted at the alternative work site, e.g., there is no connectivity for more than a few hours, the telework employee must contact the supervisor or designee to discuss the nature of the disruption and the appropriate course of action, e.g., the possibility of completing other work, taking leave, or reporting to the official duty station, depending on the expected duration of the disruption and the urgency of the day's work. Telework employees who report to the official duty station following the disruption will remain in work status.*

### **18. Changes to Telework Arrangement**

*Requests by the employee to change his or her scheduled telework days in a particular week or biweekly pay period must be submitted to and approved by management in advance.*

*A permanent change in the telework arrangement requires a new Agreement and, if applicable, a revised approved Tour of Duty form.*

### **19. Termination of the Agreement**

*The employee can terminate this telework agreement with fourteen (14) calendar days' advance notice, unless the supervisor approves with less notice. A supervisor may terminate a bargaining unit employee's telework agreement pursuant to the collective bargaining agreement. The supervisor can terminate a non-bargaining unit employee's telework agreement whenever the teleworking employee no longer meets eligibility or suitability criteria, does not conform to the terms of the agreement, or when mission needs can better be met through a different arrangement. All agreements are subject to annual review and rescission or revision.*

### **20. Training Certification**

I completed Telework training as required by law and USDA Policy on \_\_\_\_\_.

**Initial:** \_\_\_\_\_ **Date:** \_\_\_\_\_

### **21. Date of Commencement**

The telework arrangement covered by this Agreement will commence on \_\_\_\_\_.

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**EXECUTION OF TELEWORK AGREEMENT**

**I have reviewed and discussed the terms and conditions of this Agreement with my immediate supervisor.**

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

\_\_\_\_\_

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**SUPERVISOR'S USE ONLY:**

1. I have reviewed and discussed the terms and conditions of this Agreement with the above-named employee. I hereby (check one) **Approve** [ ☐ ] / **Deny** [ ☐ ] this Telework Agreement.

2. I completed the Telework Training for Supervisors as required by the Telework Enhancement Act of 2010 on \_\_\_\_\_.

**Initial:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Supervisor Name:**

\_\_\_\_\_ MI  
Last First

**Supervisor Title:**

\_\_\_\_\_

**Supervisor Office Location:**

\_\_\_\_\_ State  
City

**Supervisor Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

\_\_\_\_\_

*The supervisor will provide a copy of all telework guidance, requirements and this signed Telework Agreement to the approved employee.*

*If, within ten (10) workdays of approval or the commencement date listed above, whichever is later, the employee is not permitted to work at the alternative work site, the supervisor must notify both the employee and the appropriate labor representative, if applicable, in writing explaining the reason for the delay.*

## Summary of Article 19 (Hours of Work) for Full-Time Employees

(All times shown are local time)

	<b>BASIC SCHEDULE</b>	<b>5/4/9 COMPRESSED WORK SCHEDULE</b>	<b>4/10 COMPRESSED WORK SCHEDULE</b>	<b>BASIC FLEXIBLE SCHEDULE</b>	<b>MAXIFLEX</b>
<b>DAYS WORKED PER PAY PERIOD:</b>	<b>10 Days</b> § 19.03(1)	<b>9 Days</b> §19.03(2)(a)	<b>8 Days</b> § 19.03(2)(b)	<b>10 Days</b> § 19.03(3)(a)	<b>8 or 9 Days</b> § 19.03(3)(b)
<b>SCHEDULED HOURS PER DAY:</b>	<b>8 Hours</b> § 19.03(1)	<b>9 hours x 8 days</b> <b>8 hours x 1 day</b> §19.03(2)(a)	<b>10 Hours</b> § 19.03(2)(b)	<b>Up to 10 Hours</b> § 19.03(3)(c)(i)	<b>Up to 10 Hours</b> § 19.03(3)(c)(i)
<b>EARLIEST START- TIME*:</b>	<b>6:00 am</b> § 19.02(9)	<b>6:00 am</b> § 19.02(9)	<b>6:00 am</b> § 19.02(9)	<b>6:00 am</b> § 19.02(9)	<b>6:00 am</b> § 19.02(9)
<b>EARLIEST END-TIME*:</b>	<b>8:00pm</b> § 19.02(9)	<b>8:00pm</b> § 19.02(9)	<b>8:00pm</b> § 19.02(9)	<b>8:00pm</b> § 19.02(9)	<b>8:00pm</b> § 19.02(9)
<b>CORE HOURS:</b>	<b>N/A**</b>	<b>N/A**</b>	<b>N/A**</b>	<b>10:00am- 2:00pm on days worked</b> § 19.03(3)(c)(ii)	<b>10:00am- 2:00pm on days worked</b> § 19.03(3)(c)(ii)

<b>DEVIATION FROM SCHEDULE:</b>	<b>Not Permitted</b> § 19.03(1)(b) 5 U.S.C. § 6121(4)	<b>Not Permitted</b> § 1903(2)(c)(ii) 5 U.S.C. § 6121(4)	<b>Not Permitted</b> § 1903(2)(c)(ii) 5 U.S.C. § 6121(4)	<b>Permitted</b> § 19.03(3)(c)(iii) 5 U.S.C. § 6121(4)	<b>Permitted</b> § 19.03(3)(c)(iii) 5 U.S.C. § 6121(4)
<b>CREDIT HOURS:</b>	<b>Not Permitted</b> § 19.03(1)(c)	<b>Not Permitted</b> § 19.03(2)(c)(iii)	<b>Not Permitted</b> § 19.03(2)(c)(iii)	<b>Permitted</b> § 19.03(3)(d)	<b>Permitted</b> § 19.03(3)(d)
<b>HOLIDAY PAY</b>	<b>8 Hours</b> § 19.03(1)(d)	<b>Number of Hours Regularly Scheduled for that Day</b> § 19.03(2)(c)(iv)	<b>Number of Hours Regularly Scheduled for that Day</b> § 19.03(2)(c)(iv)	<b>8 Hours</b> § 19.03(3)(c)(iv)	<b>8 Hours</b> § 19.03(3)(c)(iv)

\* Article 19, Section 19.02(9) contains limited exceptions to these requirements:

Work Hours – Employees may work between the hours of 6:00 a.m. and 8:00 p.m. Teleworking employees whose approved schedules do not presently conform to these provisions may retain existing scheduled hours unless business needs require modification. The parties agree that facilities services such as heating, air conditioning, security, etc., may not be available prior to 7:00 a.m. or after 6:00 p.m. Regularly scheduled tours of duty under all work schedules (as defined in Section 19.03(3)(d)) may not begin before 6:00 a.m. nor extend beyond 8:00 p.m. without supervisory approval. If a specific extraordinary circumstance arises, the Agency may approve an earlier starting or later ending time on a case-by-case basis, upon the employee's written request to his/her supervisor. The supervisor will provide the employee with a written decision within two (2) workdays of this request

\*\* By operation, Basic and Compressed Work Schedules constitute the core hours on the days an employee is scheduled to work.



## MEMORANDUM OF UNDERSTANDING BETWEEN THE NATIONAL TREASURY EMPLOYEES UNION AND THE USDA, FOOD, NUTRITION & CONSUMER SERVICES REGARDING THE EXPANDED TELEWORK PILOT

This document constitutes the Memorandum of Understanding (MOU) between the National Treasury Employees Union (NTEU or Union) and the U.S. Department of Agriculture (USDA), Food, Nutrition and Consumer Services (FNCS or Agency) regarding the Expanded Telework Pilot, in accordance with Article 20, Section 20.10 of the parties' 2010 National Agreement. Pursuant to the Expanded Telework Pilot, bargaining unit employees will be selected to work on expanded telework schedules (i.e., schedules allowing telework more than six (6) days per pay period) for one (1) year. The purpose of this Pilot is to determine the efficacy of expanded telework schedules.

With regard to the implementation and execution of the Expanded Telework Pilot, NTEU and FNCS hereby agree to the following provisions:

1. Notice. Within fourteen (14) calendar days of the effective date of this MOU and the finalization of any companion documents, e.g., initial data acquisition survey instruments and Remote Work Understanding template or exemplar, the Agency will issue the agreed-upon notice of the NTEU-FNCS Expanded Telework Pilot to all bargaining unit employees via electronic mail (Attachment 1). The notice will define the parameters of the agreed-upon pilot, detail the criteria required for inclusion within the pilot, with a threshold requirement that all work to be performed remotely during telework days be completely portable and not dependent on the business need to interact in person with supervisors, co-workers or stakeholders, note responsibilities during the pilot, and will invite eligible employees to apply during a twenty-one calendar day application period.

2, Adverse Impact. Except as addressed herein, the FNCS does not anticipate that the implementation of this initiative will adversely affect any bargaining unit employees. If adverse impact is realized in the future; FNCS will provide NTEU with notice and an opportunity to bargain the specific adverse impact to the extent required by parties National Agreement and consistent with applicable law, rule and regulation.

3. Eligibility for the Pilot. To be eligible for the Expanded Telework Pilot bargaining unit employees must be eligible for Telework under Article 20 of the parties' 2010 National Agreement, applicable law, rule and regulation, and the criteria set forth in this MOU.

It is agreed that only those employees whose assigned and contemplated work is fully portable for at least seven days per pay period, i. e., requiring no in-person interaction with others to maximize effectiveness and/or efficiency, as certified by their supervisors and affirmed by their second-level supervisors, are eligible to apply for

inclusion within the expanded telework pilot. All NTEU-represented bargaining unit employees who have been notified that they are eligible for telework, have worked for FNCS in his/her current position for more than one year, and whose most recent performance rating is "Superior" or "Outstanding," may apply for participation in the Pilot to their supervisors, following the requirements detailed in Paragraph 4, below. Those meeting eligibility criteria who timely submit properly completed applications will be considered preliminarily eligible for this Pilot. Final eligibility will depend upon the number of qualified applicants and the lack of conflicts of those deemed to be preliminarily eligible in each Region and at Headquarters. In no event will more than six preliminarily eligible applicants in any Region or fourteen preliminarily eligible applicants duty stationed at Headquarters be determined to be finally eligible and authorized to participate in the expanded telework pilot

After evaluating preliminarily eligible applications at each location, the Agency will identify any directly conflicting applications, e.g., those from employees which, if deemed finally eligible and included within the Pilot would negatively impact the work effectiveness and/or efficiency of a work unit or function (e.g., affording one applicant a ten day arrangement may preclude responsibly affording a second applicant from the same work unit a nine day arrangement). In conflict circumstances, the applicants will be advised of the conflict and be provided an opportunity to withdraw, modify or align proposed telework schedules in an effort to resolve the identified conflict. If the conflict is resolved to the Agency's satisfaction, the revised application(s) will continue to be considered finally eligible. If the conflict is not resolved to the Agency's satisfaction, the application from the employee with the earliest FNCS EOD date will continue to be eligible. The competing application creating the conflict will not.

Once identified conflicts are resolved, the Agency will select up to fifty (50) eligible bargaining unit employees to participate in the Pilot, in accordance with the selection procedures set forth in Section 4, below. For the duration of Pilot, participants will telework seven (7), eight (8), nine (9) or ten (10) days per pay period as specified in newly submitted and approved telework agreements and RWUs, and as reflected in revised Tour of Duty Forms, unless any approved telework agreement or RWU is revoked or modified in accordance with the standards set forth in the collective bargaining agreement or unless the expanded Pilot is modified or ended.

4. Application Process. Applicants must submit a completed Expanded Telework Pilot Application during a twenty-one (21) workday application period to their supervisors, with a copy to NTEU and the designated FNCS Telework Coordinator, to be considered for participation in the Pilot. The application will require employees to rank their preference for seven (7), eight (8), nine (9) or ten (10)-day per pay period telework. Applications must include:

- a. A MapQuest (or other agreed upon mapping system) printout showing the travel distance from the employee's residence to his/her official worksite; and
- b. The employee's FNCS Entrance on Duty (EOD) date.

c. An attestation that the applicant will be able to conduct all work seamlessly for the number of days per pay period that the employee is seeking to telework.

5. Selection Process. The parties have agreed that a maximum of fifty (50) bargaining unit employees will participate in the Expanded Telework Pilot. The parties agree that Pilot participants should represent Headquarters and the six (6) NTEU Regions based on bargaining unit size and demand as much as practicable. Therefore, up to fourteen (14) bargaining unit employees from Headquarters and six (6) bargaining unit employees from each of the Regions may be selected to participate in the Pilot. However, if one location (i.e., Headquarters or a Region) has significantly more employee demand than the others from qualified employees, the parties may agree to adjust this distribution. Within each location, Pilot participants will be selected as follows:

a. Any finally eligible employee who travels fifty (50) miles or more from his/her residence of record to his/her official worksite each way (i.e., one hundred (100) miles or more roundtrip) will be given top priority for participation in the telework pilot. For the purposes of this Pilot, an applicant's one way commute will be defined as the shortest route from the employee's residence of record to the worksite, as calculated by MapQuest (or other agreed upon mapping program). If there are more employees that meet this condition than slots for any Region (or Headquarters), the applicant with the earliest FNCS Entrance on Duty (EOD) Date will be selected to participate.

b. If there remain available pilot slots and eligible employees in any location, and if no new conflicts are presented which cannot be readily resolved, Pilot participants will be selected in order of length of daily commute to his/her official worksite. Conflicts resulting from the consideration of applications addressed in this sub-section will be identified and resolved as detailed above in Section 3 if feasible.

6. No Change in Official Duty Station (ODS): No Added Costs. Participants who will report to the office less than *two* (2) days per pay period over an extended period of time as a result of this Pilot would normally experience a change of Official Duty Station (ODS) pursuant to 5 C.F.R § 531.605, which may impact the employee's locality pay. Relevant OPM guidance contemplates exceptions to and latitude for "temporary teleworkers" at the Agency's discretion where the employee is not expected to report to the officially designated worksite at least twice each biweekly pay period. Because the Expanded Telework Pilot is by definition time bound and subject to cessation within a brief period, and because Pilot participants may participate for brief periods, the Agency does not presently intend to redefine duty stations for Pilot participants who use their current residences as their approved telework sites during the life of the initial Pilot. If, for any reason, including a determination that the Agency's position cannot be sustained, an applicant would experience a change in ODS, FNCS will notify the applicant immediately and provide the applicant an opportunity to withdraw from consideration or participation. In no circumstance will the Agency incur any added salary or travel costs to support the Pilot.

7. Additional Costs. The Agency will not incur any additional salary or travel costs as a result of the Expanded Telework Pilot.

8. Telework Agreements. Once the list of employees selected to participate in the Pilot has been finalized, the Agency will notify the selected employees and their direct supervisors via electronic mail. The supervisor and the employee will then engage in a discussion following submission by the employee of the "Attachment A" Telework Agreement request, pursuant to Article 20, Section 20.04 of the parties' National Agreement, for expanded telework. During this discussion, the supervisor will go over the Remote Work Understanding (RWU) (Attachment 2). Once the RWU has been signed by both the employee and his/her immediate supervisor and forwarded to the Telework Coordinator, the employee may begin working his/her selected expanded telework schedule as agreed. In the event that a selected employee does not wish to enter into the RWU, he or she will be able to withdraw from the Pilot and a qualified alternate will be selected, according to the process set forth in Section 3, within three (3) workdays. If the Agency determines that it will continue expanded telework in any form, the Agency will give notice and an opportunity to bargain over the RWU requirement.

9. Equipment for Telework. Upon request, the Agency will assess each participant's existing capability for seamless telework. If equipment deficiencies are identified by the employee and confirmed by the supervisor, the Agency will provide Pilot participants with any government-issued equipment that is approved as necessary for the fulfillment of job duties and responsibilities. The Agency is not responsible for operating or other incidental costs associated with teleworking. FNCS will provide Pilot participants who require it with the equipment needed to facilitate seamless and effective supervisor, customer, co-worker and stakeholder communication during work hours, as well as that necessary to protect any sensitive or PII information that the employee may be required to print or store at telework site.<sup>1</sup>

Additionally:

a. Supplies. As necessary, the Agency will provide employees with instruction on how to order or seek reimbursement for approved supplies such as paper, printer cartridges and staples. The Agency will promptly reimburse impacted employees for the purchase of any approved supplies in accordance with prevailing reimbursement procedures.

b. Internet. The participating employee will be responsible for ensuring that he/she has a reliable, secure internet connection at the telework site, assigned work, research or training to perform during any period of non-connectivity, and contact information for the supervisor (or designee) and OIT to immediately report non-connectivity.

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<sup>1</sup> This MOU contemplates and requires that employees will print and/or store PII at the telework location only in accordance with applicable law, regulation and Agency requirements. Those authorities currently permit the viewing, printing and secured storage of PII at an alternative worksite when required for the effective and efficient performance of assigned work.

c. Phone. In accordance with Article 20, Section 20.07(5) (b) of the National Agreement, Pilot participants may be reimbursed for approved business-related phone calls on personal phones where no alternative is available. The Agency reserves the right to supply an alternative. Any Pilot participant involved in the Agency's COOP will be provided with the communications capability the COOP plan dictates.

d. Special Equipment. If an applicant needs equipment other than that specified in this section, he/she should note the need on his/her application for the Expanded Telework Pilot. If the employee is selected to participate in the Pilot, the Telework Coordinator will assess the situation in consultation with the supervisor and the Office of Information Technology, and determine whether the employee's request will be granted. The Telework Coordinator will issue a decision within five (5) workdays. If the employee's request is denied, this decision will provide the employee with an opportunity to withdraw his/her application for participation in the Pilot.

10. Recall and Workstations. Three (3) months following the start of the Pilot and shortly after receipt and review of the post-baseline first quarterly survey responses from participants, supervisors, managers, customers, co-workers and stakeholders, the Agency will begin to evaluate the feasibility of creating hoteling opportunities within each Region and at Headquarters in light of any possible extension of the Expanded Telework Pilot in any form. During this evaluation and until the Agency fulfills any obligations it may have to notify the Union of and bargain over the impact and implementation of any plan to reduce, reconfigure or eliminate participants' workstations, participants will not forfeit their workstations as a result of their inclusion in this pilot. Participants may be recalled to their official worksites in accordance with Article 20 of the National Agreement.

11. Termination or Modification of Telework. The Agency may terminate or modify a Pilot participant's Telework Agreement in accordance with Article 20 of the parties' National Agreement. In furtherance of the parties' joint effort, the Agency will notify NTEU prior to terminating or modifying a Pilot participant's expanded Telework Agreement, and the parties will meet within five (5) business days to attempt to resolve the problem.

12. Reporting Requirements. Because the purpose of this Pilot is to test whether a trial of a changed way of doing business works and to determine how it impacts employees, the Agency, the mission, and the accomplishment of work, acquiring and assessing information and perceptions from participants and those directly involved in or impacted by the Pilot is central to an assessment of the Pilot's success, advantages, disadvantages, impediments and challenges. Participants, their immediate supervisors and other managers, and two customers and two stakeholders designated by the participating employee and her/his supervisor will be required to complete the [to be] attached baseline data-gathering survey and such other information and perception surveys the Agency will periodically disseminate (currently anticipated to be no less often than quarterly). Before finalization of any surveys, drafted questions will be given to National NTEU for comment and input. NTEU will have ten (10) workdays to submit their comments, input, and/or additional questions. The Employer will consider NTEU's comments input and/or additional questions in determining the final questions. Responses will be promptly submitted to

the FNCS Telework Coordinator. The FNCS Telework Coordinator will promptly forward a copy of all such reports to the appropriate NTEU representatives.

13. Pilot Duration. The Expanded Telework Pilot will continue for one (1) year (365 calendar days). It may be modified or ended by the Agency if it becomes apparent that the Agency's mission is being jeopardized in any way. Twenty (20) workdays before the end of the Pilot, NTEU and FNCS will meet to discuss the Pilot results to help the Agency determine whether to continue expanded telework in any form. Prior to the Agency's deciding whether modification or cessation of the Pilot is appropriate, the parties will review survey responses, communications from employees, customers, stakeholders, co-workers and supervisors and consider any information and argument timely submitted by NTEU within the discussion period defined above.

14. Opt Out Provision. Pilot participants may withdraw from the Pilot at any time. If a participant withdraws from the Pilot during the first six (6) months of the Pilot and one (1) or more alternate qualified applicants exists, the applicant with the earliest FNCS EOD date will be invited to participate. If interested, the applicant will be reviewed for final qualification and selection as a replacement Pilot participant. If finally qualified and after completion of the required agreements and the resolution of any conflicts, the applicant will be selected for replacement participation and required to promptly supply responses to the baseline survey and subsequent surveys.

15. Significant or Unanticipated Problems. If either party becomes aware of significant and unanticipated problems arising from the implementation of this Expanded Telework Pilot, the Union or the Agency will inform the other, and the parties will meet to resolve the issue(s) within ten (10) workdays.

16. Effective Date and Duration. This MOU will take effect upon Agency Head Review or on the thirty-first (31st) day following execution, whichever is earlier. This MOU will terminate in accordance with its terms.

For NTEU:

For FNCS:

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