

# Collective Bargaining Agreement



*Between*

The National Science Foundation

and

Local 3403, American Federation of Government Employees, AFL-CIO

Effective February 28, 2020

Alexandria, VA

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## **PREAMBLE**

The American Federation of Government Employees (AFGE) Local 3403 (Union), representing the employees of the Bargaining Unit at the National Science Foundation (NSF) (Agency), together referred to as the Parties, desire to enter into a Labor Management Agreement which will have for its purposes, among others, the following:

- A. To provide a safe and healthful work environment;
- B. To promote fair and reasonable working conditions;
- C. To promote the highest degree of employee morale and responsibility in the NSF;
- D. To promote the mission of the Agency in a manner which will best serve the public interest;
- E. To adjust promptly all differences arising between them related to matters covered by this Agreement;
- F. To promote an improved employee-management relationship; and
- G. To promote transparency and accountability in Agency matters.

The Union and the Agency recognize that the welfare of the employees, as well as maximum productivity and efficiency of operations are the mutual objectives of both parties. To this end, the Union and the Agency will make strong efforts to improve working conditions; increase training and career opportunities; sustain a high level of morale; eliminate waste; conserve resources; prevent accidents; discourage arbitrary and capricious behavior on the part of supervisors, management personnel, Bargaining Unit employees, and other staff; encourage innovation, suggestions for and recognition of increased efficiency; and develop and maintain a working environment of mutual respect and support between supervisors and Bargaining Unit employees.

## Article 1, Unit Recognition

### Section 1      **Recognition.**

The Agency recognizes the Union as the exclusive representative of all employees of the Bargaining Unit described in Section 2 below.

### Section 2      **Unit Definition.**

The Bargaining Unit to which this Agreement applies, includes: All professional and nonprofessional employees of the National Science Foundation, excluding Management officials, supervisors, temporary employees of less than 90 days, guards, and employees described in [5 U.S.C. 7112](#)(b)(2), (3), (4), (6) and (7) (see [Appendix A](#)).

## Article 2, **General Provisions**

### Section 1      **Days.**

Unless otherwise specified, the term "days" as used in this Agreement means calendar days.

### Section 2      **Internal Posting of Agreement.**

A copy of this Agreement, and amendments negotiated in accordance with Article 37, Duration and Changes, will be available on the NSF internal website.

### Section 3      **Employee Roster.**

Upon request, the Agency will furnish the Union with a list of the names, position titles, and organizational assignments of all full-time, and part-time employees other than consultants.

### Section 4      **Electronic Official Personnel Folder.**

Except as permitted by law or regulation, no material concerning any employee will be placed in an employee's electronic Official Personnel Folder (eOPF) without the employee's knowledge. The eOPF will not be shown to anyone other than the employee or someone designated by the employee except on a need-to-know basis.

### Section 5      **Employee's Private Life.**

Except as prohibited by federal or state law, the Parties recognize that an employee's private life is his/her own and neither party shall interfere in any way except when the actions of the employee interfere with his/her official duties or adversely impact on the efficiency of the service.

## **Article 3, Rights and Responsibilities of Employees, The Union and NSF Management**

All employees, including supervisors and management officials, are free to join Local 3403 or to refrain from doing so in accordance with [5 U.S.C. 7103](#), and in no way will such choice affect employment status of any employee.

### **Section 1 Shared Union and Management Responsibilities.**

A. The Agency and Union mutually agree that there shall be no interference, restraint, coercion, reprisal, or discrimination practiced by either party so as to encourage or discourage membership in a labor organization or in the exercise of employee rights under this Agreement.

B. In the interest of promoting relations between the Parties, the Union agrees to bring to the attention of the Agency's Labor Relations Officer (LRO), and the Agency agrees to bring to the attention of the Union President, any misunderstanding, issue or concern which arises under this Agreement, other than individual employee grievances, individual appeals, or individual merit promotion matters, with a reasonable opportunity for response within ten (10) calendar days before any further action or outside the Agency is attempted.

C. Continuity Provision: When a procedural change to existing administrative processes takes place, any formal actions initiated under the prior provisions shall be completed under the prior procedure, unless said procedure was found to be in violation of applicable law, order, or regulation, or if the situation no longer makes such a procedure possible.

### **Section 2 Union Rights and Responsibilities.**

A. As the exclusive representative of employees in the Bargaining Unit, the Union shall be responsible for representing the interests of all employees in the Unit without discrimination and without regard to Union membership. The Union shall be entitled to act for and to negotiate agreements, including amendments thereto covering all employees in the Unit.



B. The Union shall be given the opportunity to be represented at formal discussions between NSF management and employees or employee representatives concerning personnel policies and practices, or other matters affecting general working conditions of employees in the Unit in a manner consistent with [5 USC 7114](#) and in the public interest.

It is understood and agreed that the provisions of this Section do not apply to discussions concerning:

1. Duty assignments between an employee(s) and a supervisor(s);
2. Counseling sessions between an employee(s) and a supervisor(s); and
3. Unless the employee requests that a representative of the Union be present, to informal discussions between an employee(s) and a supervisor(s) which are confidential or that relate to matters private to the employee(s).

C. Facilities and amenities: The Agency will provide the Union a single lockable glass door bulletin board adjacent to the Agency lockable bulletin board for the posting of Union notices at each floor in the building occupied by the Agency where such installation exists or is permitted. Union notices on Agency provided Bulletin Boards shall comply with established NSF Bulletin Board policy and criteria, and no other location(s) under management control, except the Union office, will be used by Local 3403 for the posting of Union items. Each item placed on a Bulletin Board shall be signed and dated by the President of the Union, or in the absence of such officer, by an officer designated by the President of the Union.

1. In accordance with Federal law, executive orders, government wide rules, the Agency will provide the Union with office and meeting space at room 3140 in the NSF headquarters building for use. The Agency will provide appropriate office furniture and telephone and computer equipment and services. The Union will be listed in the NSF telephone directory and on the main NSF directory board in the elevator lobbies on each floor. Management will attach to the outside wall of the Union office, adjacent to the office door, a standard sign with the Local's name and room number. If unforeseen

circumstances arise due to directives of authorities outside of the Agency for workspace allocation, the Parties agree to negotiate space upon 30 days notification to the Union. If a move is required, Management will move the furniture, supplies, equipment, telephone, etc., at no expense to the Union. The Union agrees to abide by the Agency security, maintenance and utility conservation requirements. The Union agrees to use the space only for Union business.

2. The Union may receive its U. S. Mail via the NSF Mail Room; have access to the internal NSF mail system to communicate with its officers, stewards, committee members, bargaining unit employees and NSF management; and use NSF office and copying equipment to prepare and duplicate the Union's communications to NSF management and likewise management's communications for the use of the Local's officers, stewards, and committee members.

D. The Agency shall provide to the Union the opportunity, for publication in InsideNSF, of Union notices and similar announcements of general applicability to Bargaining Unit employees. The Union agrees that any material submitted for publication shall be signed by the President of the Union, or, in the absence of such officer, by an officer designated by the President of the Union.

E. Union presentation at New Employee Orientation: On a regular basis, when scheduled, the Union will be provided up to 30 minutes to present information about the Union to new employees.

### **Section 3 Management Rights and Responsibilities.**

A. NSF Management shall exercise the authority to establish Agency policies and to promulgate Agency rules, procedures and regulations. NSF Management recognizes its responsibility to provide notice to the Union and bargain as appropriate on matters relating to personnel policies and practices and matters affecting conditions of employment of employees in the Unit.

B. New Employee Orientation: On a regular basis, Management will schedule new employee orientation to provide information to new employees regarding the terms and conditions of employment.

C. NSF Management retains the right(s):

1. To determine the mission, budget, organization, number of employees, and internal security practices of the Agency;
2. To determine the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work; and
3. In accordance with applicable laws:
  - a. 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;
  - b. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations will be conducted;
  - c. With respect to filling positions, to make selections for appointments from:
    - (1) Among properly ranked and certified candidates for promotion; or
    - (2) Any other appropriate sources.

D. Nothing in this paragraph shall preclude negotiating--

1. Procedures which management officials of the agency will observe in exercising any authority under this paragraph; or
2. Appropriate arrangements for employees adversely affected by the exercise of any authority under this paragraph by such management officials.

**Section 4      Employee Rights.**

A.      The Agency agrees new employees will be informed of the fact that the Union is the exclusive representative of Bargaining Unit employees at NSF; of the right of employees to join or not to join the Union.

B.      Any employee or group of employees of the Unit may present grievances to the Agency and have them adjusted, without the intervention of the Union, as long as the adjustment is not inconsistent with the terms of this Agreement and the Union through its designated representative has been given the opportunity to be present at all stages of the proceedings.

C.      Weingarten Rights: The Union shall be given the opportunity to be represented at any examination of an employee in the Unit by a representative of the Agency in connection with an investigation when

1.      The employee reasonably believes that the examination may result in disciplinary action against him or her;
2.      the employee requests representation;
3.      The Agency representative in an investigation is expected to inform a bargaining unit member of the right but failure to do so is not a defense against any disciplinary action that may result from the investigation; and
4.      The Agency will issue an annual notice of this right to its employees. It will inform new employees, in bargaining unit positions, of this right during employee orientation.

## Article 4, **Union Representation and Official Time**

### Section 1      **Purpose.**

Official Time permits bargaining unit employees to perform authorized representational activities on behalf of the Union during times they otherwise would be in a regular duty status, without loss of pay or charge to annual leave. This Article specifies the Union representational rights and the types of activities for which official time may be available, provides for the allocation of official time to various Union Representatives, and establishes the procedures applicable to the requesting, approval, and recording of official time use.

### Section 2      **Union Representation.**

A.      The Agency recognizes Union Officers and designated representatives to be the responsible parties to exercise the labor management function when carrying out functions properly assigned to them by the Union in accordance with applicable laws, orders, rules and regulations of higher authorities outside of the Agency and under the terms of this Agreement.

B.      The Union agrees to furnish the Labor Relations Officer (LRO) in writing a list of the names and titles of elected officers and stewards, and to notify the LRO of any changes.

C.      The Agency shall in no way restrain, interfere with, coerce or unlawfully discriminate against the officers and other designated representatives of the Union in the exercise of legitimate Union functions. Nor shall the Agency coerce, unlawfully discriminate against or take any adverse action with respect to officers and other designated representatives because of their legitimate Union activities.

D.      The area of jurisdiction of the stewards will be determined by the Union. On an individual case basis, the Union may designate a member of the Union who is not a steward to act in lieu of a steward. In the event there is more than one Union representative from a

Division, the Union will coordinate representation activities to mitigate workload burden on the Division.

E. The Parties agree that Agency management and Union Officers and other designated Union representatives when acting on behalf of employees within the bargaining unit, will:

1. Consistently strive to improve communications between employees in the bargaining unit and supervisors and management officials; and
2. Conscientiously seek to achieve mutually satisfactory solution to matters of mutual concern.

F. To these ends, the Union agrees to bring to the attention of the Agency's LRO, and the Agency agrees to bring to the attention of the Union President, any misunderstandings, issues, and concerns which may arise pursuant to this Agreement (other than employee grievances, individual merit promotion matters or other situations involving individual employees or groups of employees) with a reasonable opportunity for response or resolution, before any further action outside the agency is attempted. In addition, the Union and the Agency, when acting within their areas of responsibility, agree to interact through established channels.

### Section 3      **Statutory Use of Official Time.**

A. Union Officers and Representatives: In accordance with [5 U.S.C. Section 7131](#) of the Federal Service Labor-Management Relations Statute (FSLMRS), Union Officers and Representatives will receive reasonable amounts of Official Time within the scope of the FSLMRS for:

1. Negotiations of collective bargaining agreements and attendance at impasse proceedings (excluding travel and preparation time) under 5 U.S.C. Section 7131 (a) of the FSLMRS;
2. Participation in any phase of a Federal Labor Relations Authority (FLRA) proceeding, for which Official Time is ordered by the FLRA under Section 7131 (c) of the FSLMRS; and

3. Bargaining over issues raised during the life of a term agreement such as, but not limited to, impact and implementation.

B. In addition, the recognized positions of Union President and Vice President may request Official Time to perform statutory representational duties. The Union Stewards, including Chief Steward, will be recognized as one “entity” and may request Official Time to perform statutory representational duties also. Official Time will not exceed twenty (20) percent of one (1) individual’s or the entity’s paid time (416 hours total) in any fiscal year per recognized position.

The Agency will monitor the use of Official Time to ensure it is used for authorized purposes. Any concern of Official Time usage, the agency will provide written notice to the Union for corrective actions in accordance with federal laws, executive orders, government-wide rules and regulations, and agency policy.

#### **Section 4 Statutory Prohibition on Use of Official Time.**

Union representatives and bargaining unit employees shall not perform any activity relating to internal Union business on Official Time, including the solicitation of membership, elections of labor organization officials, and collection of dues.

#### **Section 5 Union Representative Request for Official Time Approval and Recording.**

A. A Union representative planning to use Official Time will, in advance of such usage, request and receive approval from his or her immediate supervisor or management official to be released from duty to perform representational duties. Requests shall be submitted via email to their immediate supervisor or appropriate management official.

B. The email request’s must contain:

1. Amount of Official Time requested, if known;
2. The date and time Official Time will be used;

3. Type of representational activity as defined in the Agency time & attendance system:

- a. **Labor Relations, Term Negotiations (LRT):** Used by union representatives to prepare for and negotiate a basic collective bargaining agreement or its successor, in accordance with 5 U.S.C. § 7131(a).
- b. **Labor Relations, Mid-Term Negotiations (LRM):** Used to bargain over issues raised during the life of a term agreement i.e. local level negotiations, in accordance with 5 U.S.C. § 7131(a).
- c. **Labor Relations, General Labor-Management Relations (LRG):** Used for: (i) meetings between labor and management officials to discuss general conditions of employment; (ii) labor-management committee meetings; (iii) labor relations training for union representatives; and (iv) union participation in formal meetings and investigative interviews, in accordance with 5 U.S.C. § 7131(d).
- d. **Labor Relations, Dispute Resolution (LRD):** Appear in proceedings before the Federal Labor Relations Authority during such time as an employee would otherwise be in a duty status, in accordance with 5 U.S.C. § 7131(c).

4. Confirmation that the employee is listed on a bargaining unit list or confirmation from Labor Relations Office that the employee is a bargaining unit member, and

5. Confirmation that the represented employee's supervisor has been notified, if the meeting will take place during duty hours.

C. The immediate supervisor or management official will promptly consider the request and will grant the request unless the supervisor determines the representative's presence at his/her work site is necessary to meet Agency work requirements. The request must be approved or denied in writing. If requests are approved, Union representatives will record their time in the Agency time and attendance system with the appropriate code. In the event the requests are denied because the supervisor determines the representative's presence is necessary to meet Agency work requirements, the supervisor will ensure that the representative will be granted enough time to find an alternate or identify an alternative mutually agreeable day and time for



departure. The Union representative will be given time to inform any bargaining unit employees involved in the delay.

D. Occasionally, circumstances may arise requiring a Union Representative to respond immediately to a representational need. In these circumstances, the Union Representative will inform the immediate supervisor of the use of Official Time and will submit the request/notification via email as soon after the fact as possible.

E. If there is an issue with advanced approval of Official Time, the Union, Immediate Supervisor, or Management Official may contact Labor Relations Office for assistance/guidance.

## **Article 5, Dues Withholding**

### **Section 1 Eligibility.**

To be eligible to make a payroll deduction for the payment of Union dues, the employee must:

- A. Be an employee in the Agency Bargaining Unit;
- B. Be a member, not under suspension of the Union; and
- C. Have a regular net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment of dues.

### **Section 2 Definition of Dues.**

The dues for which deductions or discretionary allotments may be made are the regular periodic amounts required to maintain the employees in good standing with the Union. For the purposes of this Section, initiation fees, special assessments, back dues, fines and similar items are not considered to be dues.

### **Section 3 Updates to Dues Structure.**

The Union will certify to the Agency's Labor Relations Officer (LRO), in writing, when there is a change in the amount of Union dues. Except for changes in assessments mandated by the AFGE National or District Office, no more than one change in the amount of dues to be deducted will be made in a 12-month period.

### **Section 4 Dues Withholdings.**

- A. Dues will be withheld on a bi-weekly basis conforming to established pay periods of the Agency. Payroll deductions for the payment of dues will commence with the first full pay period after receipt of proper notification by the payroll office or the designated effective date, whichever is later.

B. Any Bargaining Unit employee(s) may have regular and periodic dues, fees and assessments withheld through payroll deductions if the employee voluntarily completes [AFGE Form 1187](#), Request for Payroll Deductions for Labor Organization Dues, or its equivalent.

C. Any non-Bargaining Unit employee may pay union dues via a discretionary allotment.

D. AFGE Form 1187, will be used to authorize payroll deductions. The employee(s) in conjunction with the Union official designated in writing by the Union, will forward the completed form to the payroll office with a copy to the LRO.

#### Section 5 **Dues Revocation.**

A. To revoke a payroll deduction, an employee must submit a revocation on [Standard Form \(SF\) 1188](#), "Cancellation of Payroll Deductions for Labor Organization Dues," to the Treasurer of Local 3403. Revocation may be effective no sooner than the first anniversary of the employee authorization of dues.

B. Although a request to revoke a payroll deduction for dues may be submitted at any time, a revocation will not become effective until the applicable revocation date. To initiate a revocation, the completed SF-1188 must be received by the payroll office at least fifteen (15) work days prior to October 1 of any calendar year. Otherwise, the revocation action will not become effective until the next applicable revocation date (the first full pay period following October 1).

C. Upon receipt of the SF-1188 from the Union, a payroll deduction for dues will be terminated by the Agency when the Bargaining Unit employee is permanently assigned, reassigned or promoted outside the Bargaining Unit and the payroll office receives notice of such event in writing.

D. If an employee is separated from the Federal service or transferred to another agency the Division of Human Resource Management will provide written notification to the Union at the end of the biweekly pay period.

E. If a Bargaining Unit employee is suspended or expelled from the Union, the Union President or his or her designee shall promptly advise the payroll office. Action to terminate an allotment due to such circumstances shall be taken promptly when such information is received, but no later than the first full payroll period after the action.

F. In addition, the Parties mutually agree that allotments will be terminated in the event the Agreement between the Union and the Agency covering voluntary dues checkoff is terminated, suspended, or ceases to be applicable.

G. The Agency agrees to electronically transmit the remittance of Union dues withheld via bi-weekly payroll deduction to a bank account established by the Union.

## Article 6, Direct Deposit of Pay

### Section 1 Timely and Proper Compensation.

- a. Employees are entitled to timely receipt of all wages earned by them for the applicable pay period. Funds will be received via Electronic Funds Transfer (EFT) on a day established by the Agency's payroll provider.
- b. All employees are required to use direct deposit for salary payment unless the employee meets the requirements for waiver under [31 C.F.R. § 208](#). Employees are required to make changes to direct deposit information or financial allotments via the Agency's electronic self-service system.
- c. Employees are responsible for reviewing their leave and earnings statements (LES) each pay period and notifying their supervisor of any unexplained changes or irregularities. In an effort to reduce the risk of fraud and identity theft, the default setting for employees to receive their LES will be online only. Employees may change the setting to receive paper statements.

### Section 2 Replacement of Missing Funds.

If an employee fails to receive his or her owed pay on the established pay day, the Agency will initiate an investigation within two (2) business days of receiving written notification from the employee and pursue replacement of the missing funds with the payroll provider. The employee must notify the Division of Human Resource Management of non-receipt as soon as the fact becomes known.

## Article 7, Leave

### Section 1      **Purpose.**

A.      The purpose of this Article is to prescribe the policies covering the different types of leave pertinent to all bargaining unit employees in accordance with applicable laws and regulations. This Article shall be administered in accordance with [5 CFR Part 630](#) and this Agreement.

B.      The purpose of leave is to allow employees an annual vacation of extended leave for rest and recreation and to provide periods of time off for personal, medical, family, emergency, and/or other purposes.

### Section 2      **Accrual and Right to Use.**

An employee has a right to accrue and use leave in accordance with applicable laws and regulations. The supervisor has the right to approve or disapprove the use of annual leave subject to proper leave procedures and workload considerations.

### Section 3      **Leave Request.**

A.      An employee who wishes to take leave must submit his/her leave request in writing via email or the automated time and attendance system, to the supervisor. The request must include the day(s), the number of hours, and the specific time of the absence being requested by the employee. Employees should provide their supervisors with as much advanced notice as possible for leave requests. Unless the employee is incapacitated, leave requests for four (4) or more consecutive days must be requested and approved in the electronic time and attendance system.

B.      In the event that the need for leave cannot be reasonably anticipated, the employee shall attempt to contact the immediate supervisor or designated official to report the unscheduled absence by telephone and/or email as soon as possible, but generally not later than one (1) hour prior to the beginning of the employee's scheduled tour of duty.

#### Section 4      **Approval of Leave Request.**

A.      Consistent with the needs of the Agency and the employee, leave requests will be decided within five (5) business days. The decision as to the time and amount of leave granted at any specific time is made by the supervisor, considering such factors as workload, staffing, and training requirements.

B.      Employees whose leave request has been disapproved shall be informed of the reason(s) for disapproval in writing via email or automated time and attendance system. In instances where employees have received advanced approval for leave, the supervisor shall consider alternative means to accommodate the employee's request prior to rescinding the approval.

#### Section 5      **Modifying or Cancelling Leave Request.**

A.      Employees may, upon request and with the approval of their supervisor, change previously authorized annual leave to sick leave in accordance with 5 CFR Part 630. Employees may also use available balances of compensatory time, time off award, or credit hours for previously authorized annual leave.

B.      An employee may cancel previously approved leave. The supervisor must be informed of this decision in a timely manner.

#### Section 6      **Annual Leave.**

Annual leave is provided and used to allow employees an annual vacation period of extended leave for rest and recreation and to provide periods of time off for personal and emergency purposes. The use of accrued annual leave is the right of the employee. The supervisor has the right to approve or disapprove leave subject to proper leave procedures and workload considerations.

A. **Tardiness.** Employees are expected to follow their approved work schedule. When an employee does not report to work when scheduled to do so and the employee's leave status has not been clarified by the end of the pay period, the absence may be charged as absent without leave (AWOL). This will not preclude a later change in leave status for good and sufficient reason(s).

B. **Advanced Annual Leave.** With supervisory approval, employees may be advanced annual leave not to exceed the amount that can be accrued during the remainder of the leave year. To be eligible for advanced annual leave, employees must exhaust all accumulated annual leave.

Requests for advanced annual leave must be submitted in the electronic time and attendance system and approved by the supervisor, regardless of the duration of the time, prior to any usage.

C. **Restored Annual Leave.** The Agency may restore annual leave that was forfeited if the leave was forfeited because of an administrative error, exigency of the public business, or sickness of the employee. Restored annual leave will be processed in accordance with the applicable laws and regulations.

The Agency will notify employees of the deadline to schedule leave so that it may be eligible for restoration no later than thirty (30) days before the deadline. The Agency will strive to process requests for restored annual leave no later than sixty (60) days after the end of the leave year.

D. **Voluntary Leave Transfer Program.** The Agency will administer the Voluntary Leave Transfer Program (VLTP) in accordance with the Office of Personnel Management regulations. Upon acceptance into the VLTP, the Agency will disseminate the approval notification in accordance with applicable regulations.



## Section 7      **Sick Leave.**

A.      The Agency must grant sick leave to an employee when he or she requests to use sick leave for personal medical needs, as well as sick leave within specified limitations for care of a family member or bereavement, care of a family member with a serious health condition, and adoption-related purposes.

### **B.      Medical Documentation.**

A supervisor may grant sick leave for an absence up to three (3) consecutive days supported by administratively acceptable evidence, i.e., an employee's self-certification. For absences of four (4) or more consecutive work days, or in cases of suspected leave abuse, the employee is required to provide medical documentation to the Employee Relations Branch in the Division of Human Resource Management no later than fifteen (15) days upon return to duty. If the employee is unable to provide the medical documentation within fifteen (15) calendar days upon return to duty despite the employee's diligent, good faith efforts, the employee must provide the medical documentation within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the agency requests such documentation. An employee who does not provide the required evidence or medical certification within the specified time period is not entitled to sick leave.

Generally, medical documentation should be furnished to the Employee Relations Branch (ERB) in the Division of Human Resource Management. Supervisors may receive from employees a doctor's note that states the employee's name and the dates they were incapacitated without the need to forward to ERB.

C.      **Conversion of Sick Leave.** Employees may, upon request and with the supervisory approval, change previously authorized sick leave to annual leave in accordance with applicable laws and regulations. Employees may also use available balances of compensatory time, time off award, or credit hours for previously authorized annual leave.

An employee who becomes ill while on annual leave, leave without pay, compensatory time, or credit hours if applicable, may have the time of illness changed to sick leave provided that the employee notifies the supervisor on the first day of illness and otherwise complies with the requirements of this article.

D. **Advanced Sick Leave.** With supervisory approval, employees may be advanced up to two hundred forty (240) hours of sick leave for care of self and up to one hundred four (104) hours of sick leave for care of family. To be eligible for advanced sick leave, employees must exhaust all accumulated sick leave. Requests for advanced sick leave must be submitted and approved in the electronic time and attendance system, regardless of the duration of the time. If advanced sick leave is denied, the supervisor will provide the reasons for denial to the employee in writing.

1. Medical documentation will be approved in accordance with Section 7 of this article.
2. Advanced sick leave will not be approved under the following circumstances:
  - a. When a separation date has been established which would preclude the employee enough leave to repay the advanced sick leave; or
  - b. When there is other evidence that the employee will not return to duty in order to repay the advanced sick leave.
3. The total sick leave advanced must be charged against sick leave subsequently earned. In case of separation of any employee who is indebted for advanced sick leave (except in case of death, disability supported by an acceptable medical certificate, retirement for disability, or for active military service with restoration rights) recovery shall be made in accordance with applicable laws and regulations.

E. **Leave Restriction.** If there is an indication that the employee may be abusing sick leave privileges, based on timing, amount, and/or pattern, the Agency may require the employee to submit a medical certificate each time the employee wishes to use sick leave. When the Agency

puts such a requirement in effect, management will advise the employee in writing of the specific reasons for that decision and termination date of the requirement. At the end of the stated period (normally not to exceed six (6) months), the Agency will review the employee's situation and if the circumstances that led to the leave restriction have improved, will notify the employee in writing if the leave restriction is no longer in effect, or if no improvement, that the requirement will be extended.

The employee has a right to appeal the decision for leave restriction using the negotiated grievance process.

F. **Confidentiality.** The Agency agrees that privileged information dealing with an employee's medical history will be safeguarded against unauthorized access. Employees' medical documentation and/or medical history will be maintained in separate medical files and treated as a confidential medical record. The Agency may disclose such information subject to the [Privacy Act of 1974 \(552a\)](#) and [5 CFR 293](#) only for purposes of making informed management decisions and only to individuals who have a need to know.

The [Genetic Information Nondiscrimination Act of 2008](#) (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. Genetic information as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

## Section 8 **Family and Medical Leave Act.**

A. In accordance with the Family and Medical Leave Act of 1993 (found in 5 CFR Part 630), employees are covered under the provisions outlined below only if they are a permanent

full-time or part-time employee who has worked for the Federal Government for at least 12 months. Employees are entitled to use up to twelve (12) weeks of leave without pay (LWOP) during any twelve (12) month period due to:

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

B. Employees may elect to substitute annual leave and/or sick leave for LWOP under the FMLA, where consistent with law and regulations. The leave may be intermittent or may be scheduled so as to result in a reduced work schedule. While on FMLA leave, the employee is entitled to maintain health benefits coverage in accordance with applicable laws and regulations.

C. The twelve (12) month period begins on the date an employee first takes leave for a family or medical need and continues for twelve (12) months. For employees taking leave for the birth of a child or placement of a child for adoption or foster care, the twelve (12) month period begins not later than the date of birth or the date the child is placed. An employee is not entitled to twelve (12) additional workweeks of leave until the previous twelve (12) month period ends and an event or situation occurs that entitles the employee to another period of family or medical leave. This may include a continuation of a previous situation or circumstance.

D. An eligible employee who is the spouse, son, daughter, parent or next of kin of a covered service member who suffers from a serious illness or injury on active duty is entitled to a total of twenty-six (26) administrative workweeks of leave during a twelve (12) month period to care for the service member. This includes the twelve (12) weeks of regular FMLA leave and is not in addition to it. The employee is required to provide certification for a request for leave for a qualifying exigency or military caregiver.

E. FMLA requests are processed by the Agency through the Employee Relations Branch (ERB). Employees must complete and submit to ERB the appropriate form noted below depending on the type of FMLA request.

1. Form [WH-380-E](#), Medical Certification Form for Employee's Serious Health Condition.
2. Form [WH-380-F](#), Medical Certification Form for Family Member's Serious Health Condition.
3. Form [WH-384](#), FMLA Certification for Qualifying Exigency for Military Family Leave.

F. If leave taken under this section is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, the employee shall provide notice to the supervisor of the intent to take leave not less than thirty (30) calendar days before the date the leave is to begin. If the date of birth or placement or planned medical treatment requires leave to begin within thirty (30) calendar days, the employee shall provide such notice as is practicable.

G. If the need for leave is not foreseeable (e.g., a medical emergency or the unexpected availability of a child for adoption or foster care) and the employee cannot provide thirty (30) calendar days' notice of his or her need for leave, the employee shall provide notice within a reasonable period of time appropriate to the circumstances involved. If necessary, notice may be given by an employee's personal representative (e.g., a family member or other responsible

party). If the need for leave is not foreseeable and the employee is unable, due to circumstances beyond his or her control, to provide notice of his or her need for leave, the leave may not be delayed or denied.

H. Within three work days, the Agency will approve or disapprove FMLA requests or ask for additional medical documentation. If disapproved, the rationale for the decision will be provided in writing by the Agency.

I. Upon approval, the Agency will notify the employee and the employee's supervisor to include start and end dates. The employee is responsible for notifying the supervisor of his or her intent to use FMLA when taking leave. Employees are not required to provide additional medical documentation to the supervisor after approval of FMLA.

J. Medical documentation will be approved in accordance with Section 7 of this article.

#### Section 9 **Administrative Leave.**

Administrative Leave will be administered in accordance with the Administrative Leave Act of 2016 and other applicable laws and regulations. For any leave request under this article, employees must follow leave requesting procedures under Section 3 of this article when requesting time off.

1. **Blood Donation.** Employees may be granted administrative leave, not to exceed four (4) continuous hours in a workday to donate blood, and to recover from the donation. This provision does not cover an employee who gives blood for his or her own use or receives compensation for giving blood.

2. **Court Leave.** An employee will be granted admin leave for jury duty or for attending judicial proceedings in a nonofficial capacity as a witness on behalf of the Federal Government or State or local Government. The employee must provide advance notice and documentation to the immediate supervisor to request for court leave.

3. **Voting.** Supervisors may grant a limited amount of administrative leave to employees where the polls are not open for at least three (3) hours either before or after an employee's regular work schedule, whichever requires the lesser amount of time off. An employee generally should require no more than thirty (30) minutes of administrative leave for voting, depending on a combination of the employee's standard tour of duty and the open hours of the polling places.

4. **Weather and Safety Leave.** In the event of a government closure due to inclement weather, an employee will be granted weather and safety leave if they do not have an approved telework agreement or if they have an approved telework agreement and their approved alternate worksite is impacted.

#### Section 10 **Bone Marrow or Organ Donor Leave.**

A. In accordance with [5 U.S.C. 6327](#), an employee may use up to seven (7) days of paid leave each calendar year to serve as a bone-marrow donor. An employee also may use up to thirty (30) days of paid leave each calendar year to serve as an organ donor.

B. Leave for bone marrow and organ donation is a separate category of leave that is in addition to annual and sick leave. The employee must provide medical documentation in accordance with Section 7 of this article.

#### Section 11 **Disabled Veteran Leave.**

A. In accordance with the [Wounded Warriors Federal Leave Act of 2015](#), an employee hired on or after November 5, 2016, who is a veteran with a service-connected disability rating of thirty (30) percent or more from the Veterans Benefits Administration (VBA) of the Department of Veterans Affairs is entitled to up to one hundred four (104) hours of disabled veteran leave for the purposes of undergoing medical treatment for such disability.

B. **Eligibility Period.** An eligible employee may only use disabled veteran leave during the continuous twelve (12) month eligibility period beginning on the first day of employment. The twelve (12) month eligibility period is determined after the Division of Human Resource Management (HRM) has established eligibility for disabled veteran leave.

C. **Employee Request.** An employee must submit a leave request in automated time and attendance system for any instance of disabled veteran leave and include in the remarks that the leave will be (or was) “used for purposes of medical treatment for a qualifying service-connected disability.”

#### Section 12 **Funeral Leave for Combat Related Deaths.**

A. In accordance with 5 CFR 630, subpart H, an employee is entitled to up to three (3) workdays of funeral leave to make arrangements for or to attend the funeral of an immediate relative, as defined by the Office of Personnel Management, who died as a result of wounds, disease, or injury incurred while serving as a member of the Armed Forces in a combat zone. If the employee provides satisfactory reasons, the three (3) workdays do not need to be consecutive.

B. The employee must provide documentation to the supervisor to support the request.

#### Section 13 **Leave Without Pay.**

A. In accordance with 5 CFR 630 and other applicable federal laws and regulations, Absences can be charged to leave without pay (LWOP) only when the employee specifically requests it or has insufficient annual leave, sick leave, credit hours or compensatory time available to cover an approved absence. LWOP cannot be imposed as a penalty.

B. LWOP may be requested in the same manner and for the same purposes as annual leave and sick leave.



- C. A personnel action will be processed by HRM for a LWOP request that exceeds thirty (30) consecutive days.
- D. Upon return to duty after a period of LWOP, the Agency will restore the employee to the position which the employee held prior to the leave.
- E. Employees have a right to LWOP consistent with government-wide laws and regulations:
  - 1. When a disabled veteran requests LWOP for medical treatment;
  - 2. When requested by a reservist or National Guard member for military duties in accordance with appropriate military orders;
  - 3. When requested by an employee who has suffered a job-related injury or illness and is waiting adjudication of a claim for or receiving workers' compensation payments by the Department of Labor; or
  - 4. When an employee makes a request under the Family and Medical Leave Act.

#### Section 14 **Military Leave.**

- A. The Employer will comply with the provisions of the [Uniformed Services Employment and Reemployment Rights Act \(USERRA\)](#), [38 U.S.C. § 4301](#), et. al. The USERRA applies to persons who perform duty, voluntarily or involuntarily, in the uniformed services which includes the Army, Air Force, Navy, Marine Corps, Space Force, Coast Guard, and Public Health Service Commissioned Corps, as well as the reserve components of each of these services. Uniformed service includes active duty, active duty for training, inactive duty training (such as drills), initial active duty training, and funeral honors duty performed by National Guard and reserve members as well as the period for which a person is absent from a position of employment for the purpose of an examination to determine fitness to perform any such duty.
- B. The employee must provide a copy of the military orders to HRM. Approval of military leave will be based on the military orders directing the employee to active duty and a copy of the certificate on completion of such duty.

C. If an employee is called to active duty in support of a contingency operation, a personnel action will be processed. Additionally, the Agency will provide the employee notice on benefits elections while on military-LWOP.

## Article 8, Hours of Work and Work Schedules

### Section 1      **Administrative Work Week and Core Hours.**

The administrative work week is Monday through Friday. Core hours are the designated periods when employees must be on duty or on approved leave. The core hours are 9:30 a.m. to 2:30 p.m. The Agency may temporarily modify or remove the core hours to accommodate special circumstances (e.g., transit delays and special events).

### Section 2      **Types of Work Schedules.**

Each employee is required to have documented work schedule with the exception of employees on an intermittent status.

A.      **Traditional Work Schedule.** The traditional work schedule generally consists of ten (10) fixed eight (8) hour days in a biweekly pay period. There is no ability to flex the start and end times of the regularly scheduled tour of duty. Part-time employees have a basic work requirement contingent on the agreed upon work schedule arrangement with their immediate supervisor. Employees receive pay for the basic work requirement, eight (8) hours, for federal holidays.

B.      **Alternative Work Schedule.** An alternative work schedule (AWS) is designed to provide employees with more flexibility in their work lives, the ability to balance work and life responsibilities, and to improve employee satisfaction and retention. At the same time, the AWS program is designed to ensure the delivery of a high level of customer service and the accomplishment of the mission of the agency. The Parties recognize that not all work units are eligible for AWS based on the functions of the business unit. Participation in the AWS program is voluntary and contingent upon approval by the immediate supervisor.

1.      **Gliding Flexible Work Schedule.** A gliding work schedule is a type of flexible work schedule (FWS) in which a full-time employee has a basic work requirement of eight (8) hours a day, forty (40) hours in each week, and eighty (80) hours in a biweekly pay period. The employee may change the start and stop times daily up to one (1) hour

before/after the regularly scheduled tour of duty with prior supervisory notice. Employees receive pay for the basic work requirement, eight (8) hours, for federal holidays.

The flexible time band for a gliding work schedule is 6:00 a.m. to 10:00 p.m. In accordance with federal regulations, employees under a FWS may earn and use credit hours. Employees who choose to work after 6:00 p.m. are not entitled to night pay.

2. **5/4-9 Compressed Work Schedule.** “5/4-9” is a type of compressed work schedule (CWS) in which a full-time employee has a basic work requirement of eighty (80) hours in a biweekly pay period that includes eight (8) workdays of nine (9) hours each, one (1) workday of eight (8) hours and one (1) regular day off (RDO) within the biweekly pay period. There is no ability to flex the start and end times of the regularly scheduled tour of duty. An employee may occasionally swap the RDO for another day within the same pay period with advance supervisory approval. Leave requests must be for the number of hours scheduled to work on that specific day and an employee receives pay on a holiday for the number of hours normally scheduled to work. Employees on a CWS are ineligible to earn credit hours.

3. **4/10 Compressed Work Schedule.** “4/10” is a type of CWS in which a full-time employee has a basic work requirement of eighty (80) hours in a biweekly pay period. This includes four (4) workdays of ten (10) hours each and one (1) RDO each week within the biweekly pay period. There is no ability to flex the start and end times of the regularly scheduled tour of duty. An employee may occasionally swap the RDO for another day within the same pay period with advance supervisory approval. Leave requests must be for the number of hours scheduled to work on that specific day and an employee receives pay on a holiday for the number of hours normally scheduled to work. Employees on a CWS are ineligible to earn credit hours.

### Section 3 **AWS Eligibility Requirements.**

The requirements to be eligible for an AWS is as follows:

- A. The employee is not on leave restriction;
- B. The employee is not on a Performance Demonstration Opportunity Period (PDOP); or
- C. The employee has not received a disciplinary action within the last year.

#### Section 4      **Credit Hours.**

Credit hours are voluntary hours that an employee elects to work, with the supervisor's approval, in excess of the employees' basic work requirement under a FWS.

##### A.      **Earning Credit Hours.**

1. Credit hours must be approved in advance by the supervisor. Employees are authorized to earn credit hours provided there is work available for the employee and it can be performed at the requested time(s). Supervisors may pre-authorize up to two (2) credit hours per day to employees in the Agency time and attendance system. Credit hours earned beyond two (2) hours require a formal request and approval in the electronic time and attendance system. For example, a supervisor may verbally authorize an employee to earn three (3) credit hours; however, the credit hours must be submitted and approved in the electronic time and attendance system before it's certified by the supervisor.
2. Employees may earn credit hours on the weekend within the flexible time band. Requests must be approved in advance and documented in the electronic time and attendance system, regardless of the number of hours earned.

##### B.      **Using Credit Hours.**

1. The maximum number of credit hours that an employee may carry over from pay period to pay period is twenty-four (24) hours. Credit hours may be earned and used in minimum increments of fifteen (15) minutes.

2. The use of earned credit hours may be requested at any time. Credit hours may be used as a substitute for annual and sick leave. The approval or denial of the use of earned credit hours will be on the same basis as with annual leave.

**Section 5      Approval of Work Schedule Request.**

A. All work schedule requests and changes must be approved in advance by the supervisor prior to the effective date of the work schedule change. Supervisors normally will make a determination on an employee's request for a work schedule change within one (1) full pay period of the receipt of the request. Employees may not change or discontinue an authorized work schedule without supervisory approval.

B. The Agency retains the right to determine the work objectives of any given organization and to disapprove, in writing, any work schedule request that does not allow those objectives to be met. Supervisors, with the involvement of their employees, should develop tours of duty (hours of the day and days of the week the employee will report to work) and work schedules that provide for adequate coverage during official hours and days of operation and are otherwise necessary to accomplish the Agency's mission.

C. When operational requirements require a change in an employee's work schedule, whether permanently or temporarily, supervisors will provide the employee with written notice of the change generally at least one (1) pay period in advance.

D. To promote better communications, work schedules to include RDO, travel, leave, and telework, along with official contact information should be posted outside their office or workstations using available resources.

## **Section 6      Suspension and Cancellation Of AWS.**

A.      If an employee is placed on a Performance Demonstration Opportunity Period (PDOP) plan, the employee is no longer eligible for AWS. If eligible, employees removed from AWS under such circumstances may reapply for AWS after successfully completing the PDOP plan.

B.      A supervisor may suspend an employee's AWS when operational requirements require onsite presence for "busy seasons" or short-term projects. Supervisors will provide the employee with written notice of the suspension generally at least one (1) pay period in advance.

C.      An employee's AWS will not be suspended or canceled without just cause. Proposed suspension will not impact reasonable accommodations and will take into consideration other special circumstances. Justifications must be documented in writing. Once the issues have been resolved, the employee may request reinstatement. At a minimum, the suspension or cancellation will be reevaluated for reinstatement after ninety (90) days. The following reasons are justification for suspending or canceling an employee's AWS:

1. The AWS no longer supports the mission of the organization/office (a written justification explaining the basis for the decision must be provided to the employee);
2. A position change/detail causes a change in the nature of the work which prevents the employee from working AWS; or
3. The employee is placed on a PDOP plan or received other disciplinary action.

## **Section 7      Official Business and Training.**

If an employee is on official business or in training they may make-up their hours during that day without changing their work schedule. If an employee is on an approved 4/10 work schedule their work schedule will be changed to eight (8) hours per day for the pay period.

## **Section 8      Meal Period and Breaks.**

A.      A minimum thirty (30) minute lunch break must be added to each work schedule. A lunch break is required after five (5) consecutive hours of work and may not be taken at the

beginning or end of the workday. Supervisors may authorize up to one (1) hour for a lunch break at which the employee is required to work an additional 30 minutes. Employees earning credit hours, compensatory time, or overtime on the weekend are not required to take a lunch break.

B. A paid fifteen (15) minute break may be provided for each four (4) hours of work for employees who work eight (8) hour tours of duty. There will be no charge to leave for such breaks.

#### Section 9 **Religious Observances.**

A. An employee whose personal religious beliefs require the abstention from work during certain periods of time, including a religious observance connected with a death in the immediate family, may elect to engage in religious compensatory time (RCT) for time lost, without charge to leave, for meeting those religious requirements.

B. Such requests will be granted unless the immediate supervisor determines that approving the request would interfere with the organization's ability to efficiently carry out its mission.

C. Requests for Religious Compensatory Time.

1. Employees must submit a request in the electronic time and attendance system for the accrual of religious compensatory time off (RCT). Notification should take place not less than fifteen (15) days in advance whenever possible, and will include the following information:

- a. The name and/or description of the religious observance that is the basis of the request;
- b. Date(s) and time(s) the employee the employee plans to be absent to participate in the religious observance; and
- c. The date(s) and time(s) the employee plans to perform additional work to earn religious compensatory time off or to make up for the absence.



D. Scheduling Time to Use and Earn RCT

1. RCT may be earned up to thirteen (13) pay periods in advance of the pay period in which the targeted religious observance commences and must be linked to specific dates and times for future use.
2. An employee will be allowed to accumulate only the number of hours of RCT needed for the requested religious observance. If the employee does not use his or her earned religious compensatory time off as planned –
  - a. The positive balance of unused RCT may be redirected toward a future religious observance that has been approved, even if that future observance is more than thirteen (13) pay periods after the RCT was originally earned; and
  - b. The employee may not earn any additional RCT until the retained amount has been used or the need to earn additional RCT has been properly established and documented.

E. Repayment of Religious Compensatory Time

1. If the RCT is not repaid within thirteen (13) pay periods, the time outstanding will be converted to annual leave, credit hours, compensatory time, compensatory time off for travel, time-off awards or leave without pay (LWOP), as appropriate.
2. Advanced RCT will be considered indebtedness to the Agency if the employee separates without repaying the advanced time.

## Article 9, Premium Pay

### Section 1      **General Information.**

Premium pay is additional pay provided to employees for working extra hours beyond the designated tour of duty and at the direction of the immediate supervisor. Premium pay includes, compensatory (comp) time, overtime, comp time for travel, and holiday premium pay.

Compensation for premium pay will be paid in accordance with applicable federal laws and regulations, subject to regulatory biweekly/annual salary caps, not including comp time travel.

### Section 2      **Comp Time and Overtime.**

Comp time and overtime work must be authorized in advance, however, all required or approved work performed outside the basic work week shall be compensated in accordance with the [Fair Labor Standards Act \(FLSA\)](#) and other applicable laws and regulations. It is the Agency's responsibility to ensure that the employee's workload can reasonably be accomplished within the employee's regularly scheduled workday or workweek.

#### A.      **Assignment of Work.**

The assignment of compensatory and overtime work is a function of the supervisor. The supervisor retains the right to determine the need for overtime work. All overtime must be officially ordered or approved.

#### B.      **Compensation.**

1.      FLSA nonexempt employees may choose to receive comp time in lieu of overtime pay. The Agency cannot force such employees to accept comp time in lieu of overtime.
2.      FLSA exempt employee's whose salary is less than or equal to GS-10, Step 10 will be allowed to choose between comp time and overtime pay. The Agency cannot force such employees to accept compensatory time in lieu of overtime. FLSA exempt employees whose rate of pay is above the rate for GS-10, step 10, may be required to take comp time instead of overtime pay.

3. Comp time earned is equal to the amount of time spent in overtime work, e.g., one hour and fifteen minutes of overtime work yields one hour and fifteen minutes of comp time.

**C. Official Business.**

If an employee is required or ordered to attend a conference or meeting, they are entitled to comp time or overtime as stated in Section 2.B. If an employee elects to attend a conference or meeting for official business that exceeds their tour of duty, they may not earn comp time or overtime. Credit hours cannot be granted in exchange of comp time or overtime.

**Section 3 Comp Time for Travel.**

Comp time for travel (or travel comp) is earned by an employee for time spent traveling outside of the tour of duty between the official duty station and a temporary duty station.

To earn travel comp, employees must be in an official travel status. This means that the travel must be for work purposes and must be approved by your supervisor. Official travel status includes time spent traveling between the official duty station and a temporary duty station, time spent traveling between two temporary duty stations, and the “usual waiting time” preceding or interrupting such travel (e.g., waiting at an airport prior to departure).

**A. Usual Waiting Time.**

The usual waiting time at a terminal generally will not exceed two (2) hours for domestic and four (4) hours for international. An “extended” waiting period (i.e., an unusually long wait during which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes-is not considered time in a travel status.

Section 4      **Holiday Premium Pay.**

Employees who are ordered to work during their tour of duty on a holiday are entitled to receive holiday premium pay. If an employee is ordered to work beyond the tour of duty (i.e., more than (8) hours), they are entitled to comp time or overtime as described in Section 2 of this Article.

Section 5      **Approval of Premium Pay.**

All requests for premium pay must be submitted by employees and approved by the immediate supervisor in the automated time and attendance system by the end of the pay period in which it is earned with the exception of comp time for travel.

Requests for comp time for travel must be submitted by employees and approved by the immediate supervisor in the automated time and attendance system no later than one pay period after return from travel to allow for adjustments in travel.

## **Article 10, Time and Attendance System**

### **Section 1 General Information.**

An automated time and attendance system will be used by which employees must record their official hours worked and their leave status.

### **Section 2 Timesheet Validation.**

A. Employees must validate their timesheet by noon on the Friday, prior to the last day of the pay period. When an employee validates their timesheet, they attest that their timesheet is accurate to the best of their knowledge. The supervisor (or their delegate) must certify the timesheet after it is validated.

B. If an employee is unable to validate their timesheet, their designated Timekeeper should complete their timesheet on their behalf. The Compensation and Benefits Branch (CBB) in the Division of Human Resource Management (HRM) will attempt to verify the hours worked by an employee if no timesheet is submitted by the employee or the Timekeeper by the end of the pay period. If CBB is unsuccessful in verifying the hours, a timesheet will not be submitted. This avoids the potential of an improper payment to the employee.

### **Section 3 Timesheet Corrections.**

If a correction needs to be made to a timesheet after it has been processed, the employee may request their Timekeeper to submit a corrected timesheet. The supervisor must certify the corrected timesheet.

### **Section 4 Early Timesheet Submissions.**

The Agency may request the submission of timesheets earlier than the agreed upon time if the Agency deems it necessary to ensure that employees are paid on time due to a federal holiday or impending inclement weather.

Section 5      **Change in Automated System.**

The Agency will notify the Union if the automated time and attendance system will change.

## Article 11, Telework

### Section 1      **General.**

The Parties recognize the benefits of the telework program. Balancing work and family responsibilities and meeting environmental, financial, and commuting concerns are among its advantages. In recognizing these benefits, both Parties also acknowledge that the needs of the Agency to accomplish its mission are essential. Management is responsible for the efficient and effective operation of the organization, including customer service expectations and remaining highly adaptive. The [Telework Enhancement Act of 2010](#) does not establish telework as a right, and as such it is voluntary. The provisions of the Telework Program will be administered in accordance with applicable laws and regulations, the Agency Telework Policy and other guidance.

Employees engaging in telework will be treated the same as onsite employees for purposes of periodic appraisals of performance of employees and work requirements.

### Section 2      **Types of Telework.**

A.      **Regular (also known as Core).** Regular telework describes telework that occurs on a regular, recurring, and ongoing basis on an established schedule of at least one day per week.

B.      **Periodic (also known as Situational).** Periodic telework is suitable for employees who have an occasional need to telework on an ad hoc basis such as when an employee has a short-term need for focused time to complete work on a complex project or is temporarily unable to physically report to the office to include instances of inclement weather. Decisions to grant periodic telework will be made on a case-by-case basis and require advanced supervisory approval.

### Section 3      **Eligibility.**

A.      The Parties recognize that a position may be appropriate for telework, but the employee occupying the position may not meet the telework eligibility criteria established by law, regulation, or this Agreement. The Parties recognize that some positions may have duties that make the position eligible for situational telework only and that all bargaining unit positions are considered situational telework-eligible.

B.      General criteria for determining position eligibility for telework include but are not limited to the following:

1.      Portable work activities that can be performed outside of the office; and
2.      Customer service needs, including face-to-face requirements, and meeting and/or training participation requirements can be adequately met.

C.      Employees who meet the following criteria are eligible to request a telework agreement:

1.      The employee has a rating of record of “fully successful” or higher;
2.      The employee is not on a Performance Demonstration Opportunity Period (PDOP) plan;
3.      The employee must be able to complete assignments in a timely manner without close and frequent supervisor review; and
4.      The employee has the workspace, utilities, equipment, and reference materials suitable for the work to be performed at an approved alternate worksite location.
5.      Generally, new employees (to the agency or the position) may be required to serve up to a ninety (90) calendar day waiting period before requesting approval for a telework arrangement.

D.      Permanent Ineligibility

As stated in the Telework Enhancement Act (TEA), an employee who has been disciplined after December 9, 2010 for the following reasons may not telework:



1. The employee has been officially disciplined for being absent without leave (AWOL) for more than 5 days in any calendar year, or
2. The employee has been officially disciplined for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

#### **Section 4      Requests for Telework.**

Consideration for the approval of telework is based upon workload requirements, the ability to maintain effective communication in the workplace, and accomplishing of the mission of the organization. Telework denials must have a business justification and be documented in writing via the electronic tracking system.

The Parties recognize that the Telework Program and the Alternative Work Schedule Program are both designed to help promote work/life balance and provide optimum flexibility options for employees. The Parties further acknowledge that the practical effects of these two programs must be factored into their implementation.

**A.      Periodic Telework Request.** Employees participating in periodic telework must have a signed telework agreement in place and must obtain prior supervisory approval for each occurrence. On a case-by-case basis, a supervisor may approve additional telework days to cover special projects or work assignments. The immediate supervisor is the final approving official for such requests.

#### **B.      Regular Telework Request for One (1) to Two (2) Days.**

The immediate supervisor can approve an employee to telework or be absent from the duty station via an alternate work schedule, for up to two (2) days a week. The immediate supervisor is the final approving official for such requests. If the combination of AWS and the telework request results in being out of the office more than two (2) days a week, approval is required by both the immediate and second-level supervisors.

**C. Regular Telework Request for Three (3) Days.**

Some work may be portable enough for 3 or more days of telework, as judged by the supervisor. Requests of telework for three (3) days per week require the approval of both the immediate and second-level supervisors.

**D. Telework Request for Four (4) or Five (5) Days.**

1. The immediate supervisor may approve temporary requests for up to five (5) days of periodic telework not to exceed ninety (90) days. Criteria for approving such requests are as follows:

- a. The work can temporarily be performed offsite without impact to customers and internal and external stakeholders; and
- b. The employee has identified an inability to work onsite due to family (as defined by the Office of Personnel Management) or other unanticipated circumstances, such as recovering from an injury or medical condition/treatment.

2. For permanent requests (greater than ninety days (90) days) for four (4) or five (5) days of regular telework, approval of the Assistant Director (AD) or Office Head (OH) is required. Criteria for approving such requests are as follows:

- a. The work can permanently be performed offsite without impact to customers and internal and external stakeholders;
- b. The employee has identified an inability to work onsite due to family (as defined by the Office of Personnel Management) or other unanticipated circumstances.
- c. The work requires possession of unique expertise or skills critical to organizational effectiveness of the business unit; and
- d. The employee has received very good performance ratings for the previous two (2) years.

3. Permanent requests for five (5) days will require a change in duty station to the approved alternate worksite, which may result in higher or lower locality pay.

**E. Request to Switch Telework Day(s).**

An employee may request to switch their telework day for circumstances that require the employee to be in the office on the scheduled telework day. Alternate telework days must be discussed and agreed-upon by both the immediate supervisor and the employee prior to the employee switching their telework day.

**Section 5 Medical Telework as a Reasonable Accommodation.**

Employees requesting medical telework that cannot be met through a temporary approval by the immediate supervisor may request reasonable accommodation through the Office of Diversity and Inclusion (ODI). An approved reasonable accommodation request for telework supersedes the original request for telework.

**Section 6 Family Care.**

A. While performing official duties, employees are expected to have dependent care arrangements in place when teleworking. However, there may be unplanned or temporary circumstances (e.g., an unscheduled telework day in which schools are closed) when telework may be an appropriate short-term workplace flexibility for employees with caregiving responsibilities. These short-term temporary circumstances should represent the exception and not the rule.

B. The Parties agree that in these short-term, temporary telework situations, there can be a dual benefit for both the Agency and the employee. Provided the employee has an approved telework agreement, the immediate supervisor can exercise discretion in determining whether an employee can accomplish at least some part of his or her duties from the telework site in such a situation. The employee may be allowed to telework during the time he or she is not responsible

for dependent care responsibilities and be required to take appropriate leave while performing dependent care responsibilities that day.

#### **Section 7      Inclement Weather.**

In accordance with the Administrative Leave Act of 2016 and applicable OPM guidance, all employees with an approved telework agreement will be required to telework in the event of a government delay or closure. If an employee's alternate worksite is impacted by inclement weather (i.e., power outage or flooding) while the employee is teleworking, the employee would be eligible to receive weather and safety leave. If an employee's alternate worksite is impacted by childcare (i.e., schools are closed) weather and safety leave will be granted.

#### **Section 8      Telework Agreement.**

A.      All employees are required to have an approved telework agreement in place before teleworking. The approved Telework Agreement will, at a minimum identify the days the employee is approved for telework. The telework Agreement under which an employee will perform work must be clearly set forth in writing using the Agency's automated telework agreement tracking system. The employee will have access to an electronic copy. Employees may not begin participating in telework until all approving officials have approved the telework agreement request through the automated system.

B.      Employees and supervisors are responsible for ensuring telework agreements remain accurate. Substantive changes that merit a modification to a telework agreement can include, but are not limited to, when an employee:

1.      Starts a new position;
2.      Assigned a new supervisor; where the operational needs of the organization have been assessed;
3.      Changes or adds an alternate worksite;
4.      Changes to the type of telework (situational vs. core); or
5.      Change in telework frequency

## Section 9      **Approval of Telework Agreement.**

A.      Employees must submit initial requests and modifications to telework agreements in the automated telework agreement tracking system. Employees are encouraged to discuss the telework request with their immediate supervisor prior to official submission. Supervisors normally will make a determination on an employee's telework agreement within one (1) full pay period of the receipt of the request.

B.      Supervisors are responsible for determining the work objectives of their organization. The approval or denial of telework is based on business needs. Supervisors, with the involvement of their employees, should discuss how telework will work for the organization. Specific reasons a supervisor can deny a telework request include but are not limited to:

1.      The employee has required on-site position duties that do not lend themselves to a core telework agreement;
2.      There are performance-based reasons/concerns (such as training requirements for individual employees); and/or
3.      There are business-based reasons/concerns (such as the need for optimal office coverage, for example, when customers come to the office appropriate onsite presence is available to address questions or concerns).

C.      The supervisor retains the right to call-back an employee to the office for unexpected duties that cannot be accomplished while teleworking such as training, meetings that uniquely require in-person attendance, panels, retreats, and other team building exercises.

## Section 10      **Cancellation, Suspension, and Termination of Telework Agreement.**

A.      **Cancellation.** Employees may cancel their telework agreement at any time. An employee who voluntarily cancels their agreement may not request approval for a new telework agreement in the current organization for a period of six (6) months.

B. **Suspension.** A supervisor may suspend an employee's telework agreement when operational requirements require onsite presence for "busy seasons" or short-term projects. Supervisors will provide the employee with written notice of the suspension generally at least one (1) pay period in advance.

C. **Termination.** Employees will not be terminated from participating in the telework program without just cause. The following reasons are justification for terminating an employee's telework agreement:

1. The agreement no longer supports the mission of the organization/office (a written justification explaining the basis for the decision must be provided to the employee);
2. The employee's performance drops to below "fully successful";
3. A reassignment/detail causes a change in the nature of the work which prevents the employee from teleworking;
4. Employee has not complied with the terms of the agreement.

D. Termination justifications must be documented in writing. Once the issues have been resolved, the employee may request reinstatement. At a minimum, the termination will be reevaluated for reinstatement after six (6) months.

#### Section 11 **Employee and Agency Responsibilities.**

A. Employees participating in the Telework Program must establish a specific room or area, which is adequate, safe, and equipped for performance of the duties. The employee must certify the safety of the approved alternate worksite via the Safety and Security Checklist of the Telework Agreement.

B. Employees participating in the Telework Program must be responsive to calls from the office and customers unless the supervisor has approved the employee to work on a project without interruptions. Participants will also be expected to check their office voice mail and

email throughout the workday and respond as appropriate. Employees must use technology tools provided by the Agency as assigned by the supervisor to make and receive phone calls and emails, as well as collaborate, during the workday.

C. Supervisors may require employees to send an email notification of their telework start and end times for the day and to utilize the office/workstation white boards to identify telework status for colleagues and customers.

D. The Agency will ensure that employees have proper hardware, resources, and technology that allows employees to maintain their productivity and work performance while teleworking comparable to when they are onsite at the official duty station. The Agency is not required to duplicate equipment available to employees for their alternate worksite. Government-owned equipment will be serviced and maintained by the Agency at its cost. Employees may be required to transport equipment to the official Government office if necessary for servicing. Unless security policies dictate otherwise, employees may use their own hardware and devices with agency-approved software.

E. The Agency is not responsible for purchasing furniture for an employee's alternate worksite.

F. The Government will not be responsible for operating costs, home maintenance, or any other incidental cost (e.g., utilities) associated with the use of the approved alternate worksite location.

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

H. The employee will apply safeguards to protect Government Agency records from unauthorized disclosure or damage and will comply with the Privacy Act requirements set forth in [5 U.S.C. § 552a](#). Such records shall be promptly returned intact to the official duty station upon completion of their use by the employee.

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

## Section 12     **Training.**

Telework training is required by the TEA and must be completed before entering into a telework agreement. Employees may be required to provide a copy of their completed telework training certificate during the telework request process.



## Article 12, **Workers' Compensation**

### Section 1      **General Information.**

The Workers' Compensation Program will be administered in accordance with [Federal Employees' Compensation Act \(FECA\)](#), policies of the [Office of Workers' Compensation Programs \(OWCP\)](#), U.S. Department of Labor (DOL), and agency policy.

### Section 2      **Reporting an Injury/Illness.**

It is the responsibility of employees to report any injury or illness sustained in the performance of their duties to their supervisor as soon as possible. When the Agency becomes aware that an employee has suffered an occupational illness or an injury in the performance of their duties, the supervisor or the Workers' Compensation Coordinator (WCC) will immediately counsel the employee as to their right to file for compensation benefits and the procedures for filing claims. The appropriate forms and information fact sheets will be provided to the employee and/or their representative.

The Agency will post information regarding Workers' Compensation on the Agency intranet site including WCC contact information and information on filing claims.

### Section 3      **Medical Treatment.**

When an injury is reported to the supervisor, the supervisor shall immediately inform the employee that he or she may go to the Health Unit or at the employee's option, to a physician or hospital of the employee's choice. In emergency cases, when the employee is unable to indicate a preference, the Agency shall arrange for appropriate emergency care.

### Section 4      **Leave Coverage.**

An employee with a job-related injury/illness (including conditions aggravated by job-related factors) may elect to be placed on sick leave, annual leave or accrued credit hours instead of leave without pay, pending approval or disapproval of his/her compensation claim from DOL.

**Section 5      Representation.**

An occupationally ill or injured employee shall have the right to representation of their choice during this process, such as a union representative, family member, or attorney. Any files maintained by the Agency relative to the employee's claim shall be available for review by the employee or their designated representative.

**Section 6      Nondiscrimination.**

The Agency shall not discriminate against any employee because the employee has sustained an injury in the performance of their duties, or because they have exercised any rights under this Article or under programs administered by OWCP, DOL.

## Article 13, **Employee Assistance Program (EAP)**

### Section 1 **Purpose.**

A. The Parties recognize that physical and mental well-being of the workforce is important. Therefore, it is the policy of the Agency and the Union to work together to encourage employees who could benefit from services offered by the Employee Assistance Program (EAP) to seek such counseling assistance or medical treatment.

B. The Agency will utilize an EAP that at minimum offers initial assessments, short-term counseling, and referrals to employees for a wide range of problems that affect the employee's job performance and/or conduct. Problems covered by EAP include family/relationship issues, workplace concerns, alcohol and drug problems, personal and emotional difficulties, and health and behavioral issues.

### Section 2 **Voluntary and Confidential.**

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

### Section 3 **Dissemination of Information.**

A. At least once a year, the Agency will make employees aware of the EAP and the services it provides. Newly hired employees will receive appropriate EAP materials at New Employee Orientation. A link to EAP services and contact information shall be posted on Inside NSF intranet.

B. The Agency will coordinate with the Union regarding any proposed change in EAP services.

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

**Section 4      Excused Absence.**

A. A supervisor may grant administrative leave for counseling sessions in accordance with the [Administrative Leave Act of 2016](#) and other applicable laws and regulations.

B. Employees who do not want their supervisors to know of their attendance may make arrangements for EAP appointments outside of duty hours or request leave for appointments during duty hours.

## Article 14, **Dependent Care Programs**

### Section 1 **Purpose.**

Employees are encouraged to take advantage of available dependent care programs. To assist employees in balancing their work with family needs, the Agency will:

- A. Inform employees about the availability of referral services for dependent care programs during New Employee Orientation;
- B. Educate employees annually about the [Dependent Care Flexible Spending Account](#) (DCFSA);
- C. Increase supervisor and employee awareness of family-friendly programs;
- D. Provide emergency backup dependent care services; and
- E. Provide private facilities for nursing mothers.

### Section 2 **Emergency Backup Dependent Care Program.**

The Agency will provide an Emergency Backup Dependent Care Program (EBDC) for all Federal employees at a low cost. This service will be secured through an Interagency Agreement (IAA) or contract vendor. For further details, please see program information on Inside NSF intranet.

### Section 3 **Child Care Subsidy Program.**

- A. The Agency provides a Child Care Subsidy Program (CCSP) in accordance with the Office of Personnel Management (OPM) guidelines and regulations. The CCSP applies to employees whose children are under the age of thirteen (13) or disabled and under the age of eighteen (18), and are enrolled, or will be enrolled, in licensed family childcare homes or center-

based child care. The childcare must be licensed and/or regulated by State and/or local authorities.

B. NSF allocates funds for childcare expenses on a sliding scale (not to exceed \$200 per week), based on the employee's total family income. Detailed program information, including the current income scale, is available on InsideNSF.

#### **Section 4      Nursing Mothers Program.**

A. For one year after the birth of a child, an employee must be granted reasonable time to express breast milk for her nursing child each time she has a need to do so. This may include regularly compensated rest/break periods, meal periods, changes in work schedules, the use of annual leave, LWOP, credit hours, compensatory time, or other arrangements as appropriate.

B. Management will provide a private place, other than a restroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk. This onsite, private location should afford a comfortable environment for the nursing mother and contain a small table, a chair, and one electrical outlet. There should be a sink nearby if one is not located in the room. Rooms are provided near the NSF Health Unit.

#### **Section 5      Confidentiality of Services.**

Confidential information and records concerning an employee's use of services under the dependent care programs will be maintained in accordance with the Privacy Act of 1974 ([5 USC 552a](#)), Health Information Portability and Accountability Act, and other applicable laws.

#### **Section 6      Program Evaluations.**

The Agency will evaluate the costs and services periodically to determine if the programs meet employee needs and are cost efficient. The Agency will keep the Union advised of any status changes regarding dependent care programs and referral services.

## Article 15, Learning and Development

### Section 1      **Communication of Learning and Development Activities.**

A.      Within HRM, the NSF Academy will promote communication to employees concerning course descriptions and notices of available learning and development activities or programs. Specifically, Learning and development activities are searchable through the Agency's learning management system, such as LearnNSF.

B.      NSF Academy staff provide information, course literature, recommendations, and guidance concerning available learning and development activities, training rules and regulations, and procedures for requesting to participate in training;

C.      The NSF Academy will:

1.      Market and advertise training opportunities through avenues such as flyers, the Weekly Wire, Daily News, News Central video monitors and email, as appropriate.
2.      Provide resources and contact information for learning and development staff through Inside NSF.
3.      All internal course offerings will be searchable via LearnNSF. Staff can register for internal offerings and complete a SF-182 for external training through the learning management system. Course records (internal, external, and online) are maintained in the learning management system.
4.      Employees must initiate all training requests in LearnNSF where supervisors approve or deny the requests. All requests should be submitted and reviewed in a timely manner so that HRM can process the action in advance of the learning event.

### Section 2      **Learning and Development Programs.**

Learning and development programs available to employees may include:

A.      **New Employee Welcome Program (NEW)**: A comprehensive onboarding program, designed to help guide all new employees through their first year at NSF.

B. **Mentoring Program**: This program facilitates the matching of mentors/mentees based on goals, experience, and interests; and provides resources to support effective mentoring relationships.

C. **After Hours Program**: A competitive, centrally funded program for federal employees GS-13 and below and AD-2 and below who wish to further their education and skill development through undergraduate and graduate education. In addition to this program, supervisors have the discretion to fund job-related college courses for employees at any level.

D. **Leadership Development Program**: A competitive, merit-based program designed to enhance and grow the leadership capabilities of NSF employees interested in developing their leadership skills.

E. **Long Term Professional Development Program**: A program for employees looking to further develop skills in their field of specialty through a long-term education outside of NSF.



## Article 16, General Workforce Performance Management

### Section 1      **Overview.**

Performance Appraisals are an assessment of the employee work product not the individual. Performance management is the systematic process by which an agency integrates performance, pay, and award systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals.

### Section 2      **Purpose.**

The performance management program and its application of performance standards and performance elements shall be fair, objective, equitable, reasonable and related to the Employee's official position. The purpose of the performance management program in this Article is to provide a framework to ensure honest feedback and open, two-way communications between employees and their supervisors. The program focuses on contributions within the scope of the employee's job description in achievement of the agency's overall service mission. The NSF Performance Management System is to be used as a tool for executing basic management and supervisory responsibilities.

### Section 3      **Coverage.**

The provisions of this Article apply to all employees in the Bargaining Unit except for:

- A. Employees occupying positions for which employment is not expected to exceed 120 days in a consecutive 12-month period; or
- B. Employees occupying positions in Schedule C of [5 CFR, Part 213](#).

### Section 4      **Responsibilities.**

- A. Agency Responsibilities – Management Officials shall be responsible for:
  - 1. Communicating and clarifying NSF goals and objectives;

2. Identifying individual accountability for the accomplishment of organizational goals and objectives;
  3. Evaluating and improving individual and organizational performance;
  4. Using performance appraisal as a basis for adjusting base pay and determining performance awards, training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees; and
  5. Using performance awards to recognize and reward high level performance.
- B. Employee Responsibilities – Employees are responsible for:
1. Performing duties outlined in the position description as described in the performance elements
  2. Promptly notifying supervisors about factors that interfere with their ability to perform at the level of performance required by the performance elements and standards.

## Section 5      **Definitions.**

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

1.      **Acceptable Level of Competence.** The level of performance by an employee that warrants advancement of the employee's rate of basic pay to the next higher step of the grade. An employee will be considered to have attained an acceptable level of competence when he/she is currently performing at the fully successful or higher level under the General Workforce (GWF) performance appraisal system. (See Article 17)
2.      **Appraisal (or Performance Appraisal).** The process under which performance is reviewed and evaluated, which is periodic (at least annual) evaluation of job performance.
3.      **Appraisal Period (or Rating Period).** The established period of time for which performance will be reviewed and a rating of record prepared; normally 12 months unless the employee has had a change of position or supervisor.
4.      **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.

5. **Employee Performance File (EPF).** A record containing copies of employees' performance ratings of record, including the performance plans on which the ratings are based. It also includes all performance-related records, such as forms or other documents, maintained as a system of records in compliance with [552a of Title 5, U.S.C.](#), also known as the "Privacy Act of 1974."

6. **General Workforce (GWF).** All NSF employees except those in the Senior Executive Service (SES).

7. **Generic Performance Standards (GPS).** Uniform performance standards that define criteria for evaluation or results expected. The GPS are written so they may apply universally to large groups of positions and allow for meaningful and consistent comparisons of performance across Directorates and Offices. The generic standards may not be changed but may be supplemented in specific instances.

8. **Minimum Period of Performance.** The minimum period to evaluate performance for NSF GWF Performance Management Program is 90 calendar days.

9. **Non-Critical Element.** A non-critical element is a dimension or aspect of individual, team or organizational performance, exclusive of a critical element, used in assigning a summary level. It may include, but is not limited to, objectives, goals, program plans, work plans, and other means of expressing expected performance.

10. **Performance Award.** A performance-based cash payment made to an employee on the basis of his/her current performance rating of record. This award is a lump-sum payment which does not increase the rate of basic pay.

11. **Performance Demonstration Opportunity Period.** A reasonable period for the employee whose performance has been determined to be unacceptable in one or more elements to demonstrate acceptable performance.

12. **Performance Discussion.** Joint communication between supervisor and employee about the employee's work challenges and performance and its link to the

organizational effectiveness. The discussion may consist of verbal feedback sessions or formal progress reviews.

13. **Performance Element.** Refers to both critical and non-critical element.

14. **Performance Management.** Is the systematic process by which an agency involves its employees, as individuals and members of a group, in improving organizational effectiveness in the accomplishment of agency mission and goals.

15. **Performance Objectives.** Specific statements of any responsibilities and/or results the employee can reasonably be expected to accomplish during the rating period. Objectives should be specific enough to provide a clear understanding between a supervisor and employee of the work to be performed. To the extent possible, performance plans should contain objectives which reflect requirements included in the plans of supervisors and subordinates to provide a linkage between performance systems. Activities or tasks to be performed under each objective may be detailed below the objective.

16. **Performance Plan.** All the written, or otherwise recorded, performance elements that set forth expected performance. A plan must include all critical and non-critical elements and their performance standards. The document (NSF Form 1155) that specifies the critical elements and performance standards for an employee for a specified appraisal period.

17. **Performance Standard.** A statement of the expectations or requirements established for a critical element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance. A performance standard will, to the maximum extent feasible, permit the accurate evaluation of performance on the basis of objective criteria related to the job in question for each employee or position under the GWF performance system. A written performance standard will indicate the performance level which satisfies the requirements at the “Fully Successful” level for a critical element.

18. **Pool.** A portion of NSF identified by NSF management as having an optimum structure and size to facilitate the internal management of its rating and performance award processes (usually a Directorate or the Staff Offices).
19. **Pool Manager.** The individual (normally the Assistant Director, Deputy Director, or his/her designee) who has responsibility for the functioning of the General Workforce Performance Management System for his or her organizational component, including managing the performance award budget and the allocation of Quality Step Increases (QSIs). Pool managers must approve all ratings of record and all performance awards for their pools.
20. **Progress Review.** A type of formal performance discussion in which the rater (supervisor) communicates with the employee about performance compared to his or her performance standards. A progress review is not in itself an appraisal or rating. At least one progress review is required during the appraisal cycle and must be certified on NSF Form 1155.
21. **Quality Step Increase (QSI).** A QSI is a faster than normal step increases within grade level, used to reward employees at any GS grade level who display high quality performance. Only an employee who receives a rating of record of “Outstanding” or equivalent is eligible. A QSI will be in accordance with [5 C.F.R. 531](#).
22. **Rate of Basic Pay.** The amount of salary fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.
23. **Rating Official (or Rater).** The individual who is responsible for establishing performance elements and standards, appraising performance and assigning performance ratings for employees. Normally, this is the employee's immediate supervisor.
24. **Rating of Record.** The performance rating prepared at the end of an appraisal period for performance of agency-assigned duties over the entire period and the assignment of a summary level within a pattern. The approved written summary rating of a General Workforce employee's performance required at the end of the appraisal period; this constitutes the official rating of record.

25. **Reviewing Official.** The official, usually the supervisor next in line of authority above the rating official, who is responsible for reviewing and approving performance plans and ratings. In no case shall the Reviewing Official and Rating Official be the same person.
26. **Summary Rating.** The rating level assigned to an employee's overall performance based on the appraisal of performance on each critical element in the employee's performance plan.
27. **Unacceptable Performance.** Performance of an employee which fails to meet established performance standards in one or more critical elements of the employee's performance plan. Unacceptable performance in any critical element requires a rating of Unacceptable on that element and a summary rating of Unacceptable.
28. **Within Grade Increase (WIGI).** A periodic increase in an employee's rate of basic pay from one-step of the grade of his or her position to the next higher step within that grade. The employee's rating of record must be at the "Fully Successful" level to be eligible for a WIGI.

**Section 6 NSF General Workforce Performance Appraisal Program Requirements.**

**A. Planning and Monitoring Procedures.**

1. GWF Performance Plan should be documented using GWF NSF Form 1155
2. Employees should participate in plan development.
3. Plans and standards must be communicated to the employee within 30 days of the beginning of the appraisal cycle or, for new employees, within 30 days of entrance on duty.
4. Plans are completed on NSF Form 1155, "General Workforce Performance Plan and Appraisal," and forwarded via reviewing officials to OIRM/HRM.
5. Performance plans should normally include at least three (3) critical elements and no more than five (5) critical elements.
6. Provide at least one progress review, within the 12-month appraisal cycle.

B. Performance Plans.

1. Development of Performance Plans. In the planning phase of performance management raters and GWF employees discuss and attempt to agree upon critical elements, performance objectives, and performance standards. Critical elements and objectives are based on the requirements of the employee's position. Employees must have approved written performance plans based on work assignments and responsibilities. The plans cover the official appraisal period.
2. Performance plans are provided to employees at the beginning of each appraisal period (normally within 30 days). They include all critical and, where used, non-critical elements and related performance standards.
3. Employee involvement will be consistent with applicable law and regulation.
4. Written performance plans must be developed and approved by supervisors, clearly communicated to employees, and acknowledged by employees.
5. At beginning of each appraisal cycle, supervisors and employees should discuss performance goals for the upcoming cycle. Supervisors must allow employees the opportunity to provide input into their performance elements and standards. While employees have the opportunity to provide input into their performance plans, supervisors must develop and approve the performance elements and standards.
6. Supervisors must communicate each approved performance plan and how the performance expectations link to any organizational goals with their employees.
7. The Generic Performance Standards (GPS) shall be considered which are attached to NSF Form 1155.

C. Progress Reviews.

1. Performance discussions will occur at appropriate times between employees and rating officials during the appraisal period. At least one (1) progress review is mandatory and should take place approximately midway during the appraisal cycle. In addition, the rating official and the employee may meet on a more frequent basis if desired by either party and are encouraged to have ongoing dialogue and feedback as needed

regarding performance, accomplishments, work unit goals, or training and development opportunities and needs. The employee will be provided clear guidance on what type of performance will merit a rating of Fully Successful. Appropriate guidance will be provided whenever performance is determined by the Agency to not be at the fully successful level.

2. The employee and rating official will initial and date the NSF Form 1155 in the space provided after the review is conducted. Any modification to previously established elements and/or standards required as a result of progress reviews must be noted on the performance plan.

D. Monitoring Performance: Continuous performance feedback should be encouraged and practiced between supervisors and employees. Monitoring performance consists of ongoing assessment of performance compared to the stated expectations and ongoing feedback to employees on their progress toward reaching their goals. By monitoring performance throughout the appraisal cycle, supervisors can provide timely, constructive feedback on meeting expectations and identify unacceptable performance during the appraisal cycle in order to provide assistance to improve performance, rather than waiting until the end of the cycle when a rating of record is assigned. Additionally, while monitoring performance, supervisors may identify an employee's need for training or developmental opportunities in order to enhance the knowledge, skills, or abilities related to the employee's job performance in his or her current position.

E. Annual Appraisals.

1. Performance Rating. All bargaining unit employees will receive an annual performance rating. The performance rating will be issued using NSF GWF 1155 and any other additional written narrative normally within 30 days of the assessment period. The minimum appraisal period is 90 days. If an employee has not had a valid performance plan in effect for at least 90 days and, therefore, cannot be rated, the rating period will be



extended until the employee meets the 90-day minimum appraisal period. A rating of record will then be prepared and completed.

2. Specially Situated Employees. There are a number of special circumstances that may affect an employee's performance rating:

- a. Position changes. When an employee changes positions during the appraisal period if he/she has served in the former position for 90 days or more, a summary rating must be prepared and must be considered in deriving the employee's rating of record. Employees who leave their positions or the Agency must receive a close-out rating if they have completed at least 90 days of service under a valid performance plan. Any rating rendered within 90 days of the end of the rating period becomes the final rating of record for that period.
- b. Conversions. If an employee's position is converted to a position covered by this NSF appraisal system without a change of duties and responsibilities, his/her first rating of record after the conversion will be considered as the last rating received under the former system.
- c. Details and Temporary Promotions within NSF. When an employee is detailed or temporarily promoted within NSF for 120 days or more, ratings on critical elements must be prepared for the detail or temporary promotion and must be considered in deriving the employee's next rating of record. It is the responsibility of the supervisor of record to seek input from the detail supervisor for use in developing the performance plan, conducting progress reviews, and completing the rating of record.
- d. Details outside NSF. When an employee is detailed outside NSF for 120 days or more, the rating official must make a reasonable effort to contact the employee's temporary supervisor in order to obtain information about the employee's performance. If the employee has been at NSF for the minimum appraisal period (90 days), he/she must be rated at the end of the regular rating period. The employee's regular NSF rater must give consideration to the appraisal

information obtained from the borrowing organization. If the employee has not been at NSF for the minimum appraisal period but has been detailed outside NSF for the minimum appraisal period, the rater should make a reasonable effort to prepare a rating based on information from the borrowing agency.

e. Employees on Leave Without Pay or Extended Paid Leave. If an employee is absent during the appraisal cycle because he or she was on leave without pay or extended paid leave (including disabled veterans seeking medical treatment), the employee is eligible to receive a rating of record if he or she has performed work under an approved performance plan for a minimum of 90 calendar days. However, if an employee does not meet the 90-calendar day requirement, then he or she is not eligible to receive a rating of record.

f. Employees on Long-Term Full-Time Training. Employees attending a program of long-term full-time training greater than 90 calendar days may have a performance plan developed related to the training. The plan could include elements related to the achievement of specific training objectives. In this situation, supervisors may wish to contact the respective training activity for assistance and recommended input to the performance plan.

g. Employees Absent for Military Service. Employees who are absent for military service will be rated provided they have performed work under an approved performance plan for a minimum of 90 calendar days. If employees performing military service do not meet the 90 calendar day requirement supervisors will assign their most recent rating of record as the new rating of record for the appraisal cycle.

h. Employees Who Transfer or Supervisors Who Leave During the Appraisal Cycle. The length of time an employee serves under an approved performance plan determines what is required when an employee or supervisor leaves the organization. (1) If a supervisor leaves the organization, a performance narrative statement is required when an employee has performed under an approved performance plan for 90 calendar days and there are more than 90 calendar days

left in the appraisal cycle. This narrative statement will be considered by the incoming supervisor. (2) A rating is required when an employee has performed under an approved performance plan for 90 calendar days and the employee or supervisor leaves the organization with fewer than 90 calendar days remaining in the appraisal cycle. If circumstances preclude the departing supervisor from carrying out this responsibility, the higher-level management official may serve as the rating official, subject to Agency policy.

i. Appraising Disabled Veterans. The rating of record or individual performance element rating assigned to a critical element for a disabled veteran will not be lowered because the veteran has been absent from work to seek medical treatment, as provided in [5 CFR § 430.208\(f\)](#).

3. Description of Performance Rating Levels & Summary Rating Criteria. The rater may document in the narrative the employee's actual achievements on each critical element in the plan (optional). The rater then compares actual achievement against the GPS and other established standards and assigns one of the following ratings to each critical element in accordance with the GPS and any specific standards developed for the position. Any other ratings or evaluations of the employee's performance completed by other relevant individuals (e.g., previous supervisors, team or task force leaders, or other assigning officials) during the period are considered when establishing ratings. If an employee was unable to demonstrate performance on a critical element due to circumstances beyond his/her control, the critical element need not be rated, but this should be explained in the critical element narrative. An un-ratable performance element cannot be used as a factor in deriving a rating of record. In accordance with 5 CFR § 430.208(c), the NSF GWF Performance Management and Appraisal Program does not establish a forced distribution of performance rating levels. A rating of record of "Unacceptable" must be reviewed and approved by OIRM/HRM.

4. Approval of Rating and Processing.

After the rating and reviewing officials have established a final rating, the pool manager approval must be obtained. Ratings by Staff Office Directors or Assistant Directors do not require higher-level review.

5. Discussion of Final Ratings with Employees. The rating official discusses and provides an approved rating copy of NSF Form 1155 to the employee. The employee's signature signifies that the final rating was communicated and does not indicate agreement or disagreement with the rating.

6. Processing of Appraisals. The approved and completed final rating (NSF Form 1155) should be forwarded to OIRM/HRM for administrative processing. Copies should be retained by the rater and the employee.

7. Grievances. An employee who disagrees with the final performance rating may grieve the summary rating in accordance with Article 19, Negotiated Grievance & Arbitration.

a. Employees may not grieve contents (e.g., performance elements or standards) of an employee performance plan and decisions to grant or not grant a performance award or quality step increase (QSI) except in cases of alleged discrimination.

## **Section 7 Uses of Performance Appraisals and Ratings.**

A. Performance appraisals and ratings shall be used:

1. To provide employees with information on their performance and how it may be improved.

2. As a basis for performance awards and to motivate employees by recognizing and rewarding those who attain high levels of performance.

3. As a basis for decisions on personnel actions (i.e., within-grade increases, quality step increases, reassignments, promotions, training, reduction in grade, or removal).

4. Within-Grade Increase – An employee who has attained a rating of “Fully Successful” and has achieved an “acceptable level of competence” will be entitled to appropriate within-grade increases.

5. As a basis for retention during reduction in -force (RIF). Employees are entitled to additional service credit for performance based on ratings of record in accordance with the provisions of Article 23, Reduction In Force and Furlough.

## Section 8 **Addressing Less Than Fully Successful Performance.**

If the employee's performance is less than "Fully Successful" in one or more performance elements, the supervisor, in consultation with the servicing human resources office will determine the appropriate steps and approach to address and correct the performance deficiency.

A. **Unacceptable Performance & Performance Demonstration Period.** If the rater determines that the employee is performing at an "Unacceptable" level compared to the standards of his/her critical element(s), the rater shall identify the specific, performance-related problem(s). After this determination, the rater shall develop in consultation with OIRM/HRM, a written Performance Demonstration Period. This demonstration period will identify the employee's specific performance deficiencies, the successful level of performance, the action(s) that must be taken by the employee to improve to the successful level of performance, the methods that will be employed to measure the improvement, and any provisions for counseling, training, or other appropriate assistance. In addition to a review of the employee's work products, the Performance Demonstration Period will be tailored to the specific needs of the employee and may include additional instructions, counseling, assignment of a mentor, or other assistance as appropriate. The employee will be given 30 days in which to demonstrate improved performance before the rater makes a final determination of performance level. The period may be extended at the rater's discretion because of the complexity of a position and/or other extenuating circumstances. The Performance Demonstration Opportunity Period will afford the employee a reasonable opportunity to demonstrate acceptable performance and will identify:

1. Critical Element(s) in which performance is "Unacceptable" and a description of the unacceptable performance.
2. What standards the employee must attain in order to demonstrate "Minimally Successful" performance.

3. Duration of Performance Demonstration Opportunity Period. The duration must be reasonable and commensurate with the duties and responsibilities of the position, typically 30 calendar days.

4. Statement of the possible consequences of failure to raise/demonstrate performance to the “Fully Successful” level during the Performance Demonstration Period.

B. The Performance Demonstration Opportunity Period will afford the employee a reasonable opportunity of at least 30 calendar days to resolve the specific identified performance-related problem(s). The goal of this Performance Demonstration Period is to return the employee to successful performance as soon as possible. At any time during the Performance Demonstration Period, the rater may conclude that the employee’s performance has improved to the Fully Successful level and the Performance Demonstration Period can be terminated. In that event, the rater will notify the employee in writing of the determination to terminate the Performance Demonstration Period.

C. Performance Demonstration Opportunity Period Determination. At the conclusion of the demonstration period, the rater will provide the employee with a written determination stating whether or not the employee's performance has risen to the “Fully Successful” level.

1. Determination of Fully Successful Performance. The written determination will be issued by the rater or other appropriate designated official with conclusion and determination of Fully Successful performance level.

2. Determination of Unacceptable Performance. If, at the conclusion of the demonstration period, an employee has not brought his/her performance to an acceptable level, the written determination will be issued by the rater or other appropriate designated official with the conclusion and determination of Unacceptable level of performance, the employee will received an Unacceptable Rating of Record with explanation, and the rater may propose a reassignment, reduction in grade, or removal of the employee following

performance-based action procedures , or if appropriate use 5 CFR Part 752 Adverse Actions.

## **Section 9      Performance Based Actions.**

Should all remedial actions fail, and the employee's performance is determined to be unacceptable, the supervisor will issue a rating of unacceptable performance to the employee and one of the following actions will be proposed: reassignment, reduction to the next lower appropriate grade, or removal.

A.      An employee who is reassigned or demoted to a position at a lower grade shall receive a determination of his/her standing after 90 calendar days in the new position.

B.      A notice of reassignment for performance reasons shall contain an explanation of the reasons for the reassignment. When a reassignment is taken in these instances, the following shall apply:

1.      The reassignment shall be to an available position for which the employee has potential to achieve acceptable performance;
2.      The employee shall receive appropriate training and assistance to enable the employee to achieve an acceptable level of performance in the position;
3.      The reassignment shall be at the grade and step level equal to that of the position held by the employee prior to the reassignment.

C.      An employee whose reduction in grade or removal is proposed for unacceptable performance is entitled to:

1.      Thirty (30) calendar days advance written notice of the proposed action which identifies both the specific instances of unacceptable performance by the employee on which the action is based, and the critical element(s) of the employee's position involved in each instance of unacceptable performance;
2.      Be represented by an attorney and/or other representative of the employee's choice;

3. A reasonable time, not to exceed fifteen (15) calendar days to answer orally and/or in writing
4. A reasonable amount of authorized time, up to eight (8) hours, to prepare an answer; and
5. The employee and/or his/her representative will be provided with a copy of the evidence file.

D. An official who sustains the proposed reasons against an employee in an action based on unacceptable performance will set forth his/her reasons for the decision in writing. The employee will be given a written decision which:

1. Specifies the instances of unacceptable performance on which the decision is based, and
2. Specifies the effective date, the action to be taken, and the employee's right to appeal the decision.

E. The final decision in the case of a proposed action to either remove or downgrade an employee based on unacceptable performance shall be based on those instances which occurred during the 1-year period ending on the date of the notice proposing the performance-based action.

F. The decision shall inform the employee of their right to appeal to either the Merit Systems Protection Board (MSPB) in accordance with applicable laws or to file a grievance under the negotiated grievance procedure (Article 19).

An extension of the advance notice period and the period for replying to a notice of proposed action will be considered by the person issuing the notice, where permitted by law, if requested in a timely manner in writing by an employee or the employee's representative for valid reason beyond the control of the employee.



## Section 10     **Training and Career Development.**

- A.     Employee training and development will be administered in accordance with all applicable laws, rules, regulations, and the provisions of this Agreement.
  
- B.     Either Employees or managers may initiate discussion of individual training needs. Such discussions may or may not be linked to an Individual Development Plan (IDP).
  
- C.     Training nominations and/or approval will be based on the potential use of the training to improve organizational or individual performance or other criteria established by applicable law, rule, regulation, and the provisions of this Agreement. Nomination and selection for training and career development programs and courses will be made in accordance with [5 CFR § 410.306](#).
  
- D.     The Agency shall notify Employees as soon as possible regarding mandatory training so that Employees have adequate time to make any necessary personal arrangements.
  
- E.     Career Development.  
Each Employee will be permitted to establish an IDP. An IDP is a flexible document jointly and voluntarily developed between supervisor or other Agency-designated Management official and Employee to be used as a roadmap for the Employee's professional and career development. The primary emphasis of the plans will be, first to address the competencies (or knowledge, skills, and abilities) needed by the Employee in his/her current position; second, to prepare Employees for new career opportunities; and third, to address the competencies needed for advancement beyond his/her current journey level.

## Section 11     **Appraisal Records.**

- A.     All employees' records shall be maintained in accordance with applicable laws and regulations, including The Privacy Act of 1974. The Agency will maintain employee's Electronic Official Personnel Folders (e-OPFs) in accordance with [5 C.F.R. Part 293](#) and other

applicable OPM laws and regulations. Employees will be allowed to have placed in their eOPF official documents which pursuant to OPM regulations may be retained in the eOPF.

**B. Employee performance records are filed in a separate folder of the eOPF and **restricted access to****

1. performance plans and appraisals in eOPF will be restricted to: (a) each employee's access to his or her own performance files; and the Agency's Human Resources staff who maintain personnel records in eOPF.
2. the system's internal controls will require each HRM employee who scans and copies performance files to the system to input the employee's information and then verify the document and employee information before final submission.
3. performance information will not be accessible by personnel outside the Agency.
4. performance information may be transferred to another agency or to the National Personnel Records Center at any time, even after an employee separates from the Agency.

**C. Employee performance records are retained as follows: Performance ratings of record, including the performance plans on which they are based, shall be retained for 4 years.**

1. Appraisals of unacceptable performance, where a notice of proposed removal or reduction in grade is issued but not effected, are destroyed along with the notice and all related documents after the employee completes one year of acceptable performance from the date of the notice.
2. When any performance document is required in connection with an ongoing administrative, quasi-judicial, or judicial proceeding, it is retained as long as necessary beyond the stated retention schedules.

## Article 17, Acceptable Level of Competence

### Section 1      **Purpose.**

Acceptable level of competence (ALOC) is a level of performance by an employee that warrants advancement of the employee's rate of basic pay to the next higher step of the grade. An employee will be considered to have attained an acceptable level of competence, and be eligible for a within-grade increase, when he/she is performing at an overall performance rating of "Fully Successful" or higher under the NSF General Workforce Performance Management System.

A.      Basis for determination. An acceptable level of competence determination shall be based on an employee's performance of the duties and responsibilities of his/her assigned position or positions during the 52-week waiting period except when:

1.      An employee has not been informed of the specific requirements for performance at an acceptable level of competency at least 90 days before the end of a waiting period;  
or
2.      An employee is reduced in grade because of unacceptable performance to a position in which he/she is, or will within 60 days become, eligible for consideration for a within-grade increase.

B.      Extension of waiting period. Under the circumstances described in A.1 and A.2 above, the employee shall be informed that his/her determination is postponed and of the specific requirements for performance at an acceptable level of competence. The determination shall be based on a period of at least 90 days during which the employee has had a reasonable opportunity to demonstrate performance at an acceptable level of competence.

C.      Documentation. The decision to grant or withhold a within-grade increase to an employee must be supported by the employee's most recent appraisal made pursuant to the provisions of the NSF General Workforce Performance Management System. If the most recent rating of record does not support the decision or was assigned earlier than the most recently completed appraisal period, a more current rating of record must be prepared. A within-grade increase will

be granted when the overall rating is "Fully Successful" or higher. A within-grade increase must be withheld when the overall rating is "Minimally Successful" or "Unacceptable."

1. A level of competence determination shall be communicated to an employee in writing as soon as possible after completion of the waiting period or other period upon which it was based.
2. When the rating official determines that an employee's performance is not at an acceptable level of competence, the negative determination shall be communicated to the employee in writing and shall:
  - a. Set forth the reasons for the negative determination and the respects in which the employee must improve his or her performance in order to be granted a within-grade increase;
  - b. Inform the employee of his/her right to request that the appropriately designated official reconsider the determination.

## **Section 2      Reconsideration of a Negative Determination.**

A. An employee or an employee's personal representative may request reconsideration of a negative determination by filing, not more than 15 calendar days after receiving notice of determination, a written response to the negative determination setting forth the reasons the Agency shall reconsider the determination.

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

1. The written negative determination and the basis therefore;
2. The employee's written request for reconsideration;
3. The report of investigation when an investigation is made;
4. The written summary or transcript of any personal presentation made; and
5. The agency's decision on the request for reconsideration.

- C. The file shall not contain any document that has not been made available to the employee or his/her personal representative with an opportunity to submit a written exception to any summary of the employee's personal presentation.
- D. An employee in a duty status may request (and shall be granted up to a maximum of 8 hours) official time to review the material relied upon to support the negative determination and to prepare a response to the determination.
- E. The Agency shall provide the employee with a prompt written final decision; normally within 15 calendar days of receipt of the request for reconsideration.
- F. The time limit to request a reconsideration may be extended when the employee shows he/she was not notified of the time limit and was not otherwise aware of it, or that the employee was prevented by circumstances beyond his/her control from requesting reconsideration within the time limit.
- G. When a negative determination is sustained after reconsideration, an employee shall be informed in writing of the reasons for the decision and of his/her right to grieve the decision. The negotiated grievance procedure is the exclusive procedure for employees covered by the agreement to seek resolution of an issue regarding a sustained negative ALOC determination.

### **Section 3 Continuing Evaluation Following Withholding.**

After a within-grade increase has been withheld, the rating official may grant the within-grade increase at any time after he/she determines that the employee has demonstrated sustained performance at an acceptable level of competence. However, the rating official is only required to determine whether the employee's performance is at an acceptable level of competence after each 52-week period following the original due date for the within-grade increase.

**Section 4      Effective Date of Within-Grade Increase.**

A.      Except as provided in paragraph B of this section, a within-grade increase shall be effective on the first day of the first pay period following completion of the required waiting period and in compliance with the conditions of eligibility. When, due to administrative error, oversight, or delay, a positive determination made after the waiting period is completed, the effective date of the within-grade increase shall be retroactive to the original due date.

B.      When an acceptable level of competence is achieved at some time after a negative determination, the effective date is the first day of the first pay period after the acceptable determination has been made.

## Article 18, **Disciplinary and Adverse Actions**

### Section 1      **Purpose.**

The Parties agree the Agency will practice progressive discipline. The concept of progressive discipline is designed primarily to correct and improve employee behavior and guides decisions regarding discipline. A common pattern of progressive discipline could be oral and/or written informal actions, formal actions such as reprimand, and short-term suspension, long-term suspension and removal. Any of these steps may be bypassed when the nature of the misconduct makes a higher form of discipline appropriate. Discipline will be consistent with rules, regulations, laws, and will be neither capricious nor arbitrary.

### Section 2      **Coverage.**

This Article applies to bargaining unit employees who have completed their probationary or trial period. Informal actions, which are non-disciplinary actions, are excluded from this article.

### Section 3      **Application.**

A. Discipline is generally preceded by oral and/or written informal actions (such as letter of expectations, counseling, and warning). Informal actions are conducted privately and in such a manner as to avoid embarrassment to the employee. Employees will be subject to disciplinary action for just and sufficient cause and adverse action for such cause as promotes the efficiency of the service.

B. Disciplinary and adverse actions are applied using the following principles:

1. Decisions on taking disciplinary and adverse actions and determining appropriate penalties are made in accordance with regulation.
2. Disciplinary and adverse action procedures are to be followed in all cases to which these procedures apply.
3. The deciding official will always be different from the official who proposed a disciplinary or adverse action.

4. Normally the deciding official will be at least one level of management higher than the proposing official.

5. Records of disciplinary or adverse actions will be purged in a timely manner in accordance with applicable regulations and this Agreement. Disciplinary record of a letter of reprimands may not be relied upon to support a subsequent action if the record has been purged. Purged records may not be archived in private, administrative, divisional, Directorate, or Office files.

#### Section 4      **Definitions.**

A.      **Adverse Action:** A personnel action affecting an employee's pay, grade or position with the goal of addressing employee misconduct. For the purposes of this article, they include a removal, suspension from duty and pay for more than fourteen (14) calendar days (including an indefinite suspension), reduction in grade, or reduction in pay.

B.      **Deciding Official:** A management official at a higher level of management than the Proposing Official, usually the second line supervisor, who is authorized to render Agency decisions.

C.      **Disciplinary Action:** Formal disciplinary actions represent the traditional approach to correcting employee behavior. For the purposes of this Article, they include reprimands and suspensions for fourteen (14) days or less. These formal disciplinary actions are recorded, either temporarily or permanently, in an employee's eOPF.

D.      **Employee:** An employee is defined as any NSF employee in the competitive or excepted service who completed their probationary/trial period (5 U.S.C. Chapter 7511).

E.      **Informal Actions:** A non-disciplinary memorandum (such as letter of expectations, counseling, and warning) from a supervisor to an employee expressing areas of concern related to the employee's conduct.



F. **Letter of Reprimand:** The first level of formal, written disciplinary action that may be issued by a supervisor to correct an employee's behavior when the misconduct warrants a response more severe than a warning.

G. **Notice period:** The period of time that begins the day after an employee receives a written proposal of an action based on misconduct and which ends on the effective date of the action, if effected.

H. **Probationary/Trial Period:** An extension of the appointment authority to assess the candidate's ability and suitability for the position to which they have been appointed. The probationary period is typically no less than the initial 12 months of federal service. (5 U.S.C. Chapter 7511)

I. **Proposing Official:** A management official, usually the first line supervisor, who is authorized to propose disciplinary and adverse actions.

J. **Reduction-in-grade/Demotion:** An involuntary assignment of an employee to a position at a lower classification level under a position classification system or an involuntary reduction in the rate of basic pay fixed by law or administrative action for the position held by the employee.

K. **Removal:** A formal adverse action that places an employee on an involuntary separation due to conduct or performance reasons.

L. **Reply period:** The initial days of the notice period within which an employee may provide an oral and/or written response to a proposed notice for disciplinary or adverse action.

M. **Suspension:** A formal disciplinary or adverse action that places an employee in a non-duty, non-pay status for a defined period of time due to disciplinary reasons. Suspensions taken under this Article will be served on consecutive days.

#### Section 5 **Procedures for Taking Informal Actions.**

The Parties agree that, as appropriate for the circumstances, informal action is the first step in promoting discipline in the workplace and practicing progressive discipline. A Letter of Counseling (LOC) is a way of describing unacceptable behavior so that the employee can avoid the behavior in the future. The employee is required to sign the Letter of Counseling indicating that they received the counseling. If the behavior described by the LOC is not corrected and a subsequent similar incident occurs, the LOC may serve as justification for more serious administrative action. A LOC is not archived in the employee's Official Personnel folder (eOPF).

#### Section 6 **Procedures for Taking Disciplinary Actions.**

For the purpose of this Agreement, disciplinary actions are defined as written reprimands and suspensions of 14 calendar days or less.

##### A. Letter of Reprimand:

1. A reprimand will specify that the employee may be subject to more severe disciplinary action upon any further offense and that a copy of the reprimand will be made a part of the employee's Official Personnel Folder (eOPF) for up to two (2) years. If there has been no misconduct since its issuance, the reprimand may be removed from the eOPF records, after one (1) year.
2. **Grievance Right:** An employee who elects to grieve an action through Article 19, Negotiated Grievance & Arbitration Procedure may be represented only by the Union. However, before pursuing a grievance, an employee may invoke Alternative Dispute Resolution (ADR) for non-EEO Disputes. If so, it will not negate the employee's right to file a grievance at the conclusion of ADR services if a settlement is not reached. See Article 21.

B. Suspensions of Fourteen (14) Days or Less:

1. Advance Written Notice: The Agency will provide advance written notice stating the specific reason(s) for the proposed action to an employee against whom a suspension for fourteen (14) calendar days or less is proposed. The notice will inform the employee of his or her right to review the material relied on to support the reasons for the action given in the notice, to the extent such information exists and is related to the action and include a copy of evidence relied upon.

2. Opportunity to Respond Orally and/or In Writing:

a. Oral Replies: Absent just cause, any oral and/or written reply must be presented within fourteen (14) calendar days of receipt of the notice of proposed suspension and supporting material. Extensions of the reply period may be made by mutual agreement of the Parties. All extensions granted will be confirmed in writing or electronic mail.

b. The employee will have the right to be represented by the Union, or by an attorney or other representative of his own choosing in connection with the oral and/or written reply.

c. NSF will provide a summary of any oral reply made to the affected employee and/or his/her designated representative prior to the time a final decision is made. The employee and representative will be given a reasonable period, based on the length of the summary to identify and submit corrections they feel are appropriate.

d. Written Replies: Written replies must be received by the designated official prior to the end of the fourteen (14) calendar day reply period.

C. Final Decision: After receipt of the written and/or oral reply, and any corrections to the summary submitted by the employee or representative, the Agency will issue a final decision. In the event no written or oral reply is provided, the decision will be issued after the end of the

fourteen (14) calendar day notice period. The final decision will advise the employee of the specific reason(s) for the decision and appeal rights.

D. **Grievance Right:** An employee who elects to grieve an action through the Article 19, Negotiated Grievance & Arbitration Procedure; may be represented only by the Union. However, before pursuing a grievance, an employee may invoke Alternative Dispute Resolution (ADR) for non-EEO Disputes. If so, it will not negate the employee's right to file a grievance at the conclusion of ADR services if a settlement is not reached. See Article 21.

E. **Simultaneous Service of Decision Notice on Designated Union Representative:** The Agency will, after a bargaining unit employee has designated the Union as his/her representative in a proposed disciplinary action, simultaneously serve a copy of the final decision letter on the employee and the Union. The preferred method of simultaneous service will be in person. If the designated representative is not present with the employee at the time of service, simultaneous service may be accomplished by email or mail. If the Union has not advised the Agency of a specifically named Union representative, the Agency will serve the Union president.

## **Section 7      Procedures for Taking Adverse Actions.**

For the purpose of this agreement, adverse actions are defined as removals, suspensions of more than fourteen (14) days and reductions-in-grade or pay (demotions).

A. **Advance Written Notice:**

1. The employee will be given at least thirty (30) calendar days advance written notice stating the specific reason(s) for the proposed action, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, ([5 CFR § 7513](#)).

2. In cases of proposed removal or indefinite suspension where there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, the employee will be given written notice stating the

specific reason(s) for the proposed action no less than seven (7) days in advance of the action.

B. Copy of Material Relied Upon: With the notice, the employee will be provided, to the extent such information exists and is related to the action, a copy of those portions of all written documents and recordings, which contain information or evidence relied upon by the Agency as the basis for the action, as well as those portions of written documents and recordings that are favorable to the employee.

C. Opportunity to respond orally and/or in writing: The employee will be given fourteen (14) calendar days from receipt of the notice and supporting material to present an oral and/or written reply to the proposed action. The employee will have the right to be represented by the Union, or by an attorney or other representative of his own choosing in connection with the oral and/or written reply. Extensions of the reply period may be made by mutual agreement of the Parties. All extensions granted will be confirmed in writing or electronic mail.

1. Oral Replies:

a. Absent just cause, any oral and/or written reply must be presented within fourteen (14) calendar days of receipt of the notice of proposed suspension and supporting material. Extensions of the reply period may be made by mutual agreement of the Parties. All extensions granted will be confirmed in writing or electronic mail.

b. Oral replies will generally be heard at NSF.

c. To the maximum extent possible, the Union will make a reasonable effort to designate a representative at the employee's work location to participate in oral replies.

d. The Agency will provide a summary of any oral reply made to the affected employee and/or his/her designated representative prior to the time a final decision is made. The employee and representative will be given a reasonable period, based on the length of the transcript, to identify and submit corrections

they feel are appropriate. The transcript, including all submitted corrections will be provided to the deciding official before the final decision is made.

2. Written Replies: Written replies must be received by the designated official prior to the end of the fourteen (14) calendar day reply period.

D. Final Decision: After receipt of the written and/or oral reply, and any corrections to the transcript submitted by the employee or representative, the Agency will issue a final decision. In the event no written or oral reply is provided, the decision will be issued after the end of the thirty (30) calendar day notice Advance Written Notice period.

1. Reason(s) for Decision: The final decision will advise the employee of the specific reasons(s) for the decision. In cases where an action is proposed for reasons of off-duty misconduct, the Agency's written notification will also contain a statement describing the nexus between the off-duty misconduct and the efficiency of the service.

2. Grievance/Appeal Rights: The decision notice will advise the employee of the right file a grievance or to appeal the action to the Merit Systems Protection Board (MSPB), but not both. Under no condition may an employee appeal an adverse action to both the MSPB and through the grievance process.

3. Right to Representation: An employee who elects to grieve an action through Article 19, Negotiated Grievance & Arbitration may be represented only by the Union. If the Union invokes arbitration, the employee may be represented only by the Union. An employee who files an appeal with the MSPB may designate a representative of their choice, to include an attorney or other individual, so long as no conflict of interest would prevent that person serving in such a capacity.

E. Simultaneous Service of Decision Notice on Designated Union Representative: The Agency will, after a bargaining unit employee has designated the Union as his/her representative in a proposed adverse action, simultaneously serve a copy of the final decision letter on the employee and the Union. The preferred method of simultaneous service will be in

person. If the designated representative is not present with the employee at the time of service, simultaneous service may be accomplished by email or mail. If the Union has not advised the Agency of a specifically named Union representative, the Agency will serve the Union President.

**Section 8      Last Chance Agreement.**

A.      A Last Chance Agreement (LCA) is a voluntary agreement between the Agency and Employee aimed at rehabilitation of employee whereby the Agency agrees to hold an adverse action decision in abeyance in exchange for an Employee's:

1.      Commitment to abide by a certain set of behaviors or conditions for a set period of time;
2.      Waiver of his/her rights to challenge the decision; and
3.      Agreement that if the Employee fails to fulfill the terms of the agreement, the decision will be implemented.

B.      The LCA must be in writing and include the cause for the action, timeline for compliance, and criteria to judge compliance within the terms of the Agreement.

C.      The Union may examine any LCA before issuance for impact on bargaining unit interest.

D.      The employee is entitled to have a Union representative in LCA meetings upon their request.

## Article 19, Negotiated Grievance and Arbitration Procedures

### Section 1      **Purpose.**

Provide a mutually acceptable method for the prompt resolution of grievances, at a level that has control and authority to resolve the matter. The Parties agree grievances should be resolved in an orderly, prompt and equitable manner that promotes mutual respect and dignity to both the Employee and Management and is consistent with the principles of good management and the public interest. Most grievances arise from misunderstandings or disputes which can be resolved promptly and satisfactorily on an informal basis. In order to resolve grievances at the lowest level, the Parties agree to have open discussions between the participants of the issue.

### Section 2      **Employee(s), Union, and Management Rights.**

At all stages of the grievance procedure under this Article an employee(s), union, and management shall:

#### A.      Employee(s) and Union Rights:

1.      Employees and their representatives will be free from restraint, interference, coercion, or reprisal, consistent with [5 USC Chapter 71](#) and this Agreement, in seeking adjustment of grievances. Have the right to represent him/herself or to be accompanied, represented, and advised by a representative supplied by Local 3403. In the event the Union is not representing the grievant, the Union will be given the opportunity to have an observer present at any meeting at which the grievance could be resolved during all stages of the grievance procedure. A change of designated representative may be made at any stage of a grievance. This Article shall not be construed in any manner to diminish or impair any rights which would otherwise be available to the employee in the Unit, including the right of the employee to represent him/herself at any stage of the grievance, except that the employee shall not have the right to invoke arbitration.
2.      Employee shall be authorized reasonable time while on duty to prepare and participate in grievances, including individual or group grievances according to Article 4,



Union Representation and Official Time. Supervisory approval for absence from the official duty location must be obtained in advance. If the supervisor does not approve the requested absence, it cannot be for the purpose of delaying the grievance or for arbitrary or capricious reasons. If the requested time is disapproved, then any proposed action which is the subject of the grievance and which has not already been put into effect will be delayed until Agency approval is given. In the case of action that has already been put into effect, the disapproval will not extend beyond five (5) calendar days. In addition, any time limits with respect to the grievance shall be extended to take into account the delay. If the grievant acts as his or her own representative the grievant may be entitled to reasonable time for preparation.

B. Management Rights. At any stage of a grievance, an Agency official considering the grievance may be accompanied, represented, and advised by an individual from the Division of Human Resource Management and/or the Office of General Counsel, NSF.

### Section 3 Coverage and Exclusions.

A. General. The procedure in this Article shall be the exclusive grievance procedure for all employees in the bargaining unit. Bargaining unit members may join a group in submitting a grievance as if the group were an individual. No bargaining unit member may be included in a group grievance if he or she has not signed the formal grievance. All members of a group that grieves shall sign any formal grievance. A group grievance shall be processed in the name of the first listed grievant, and the group shall be represented by only one representative.

B. Management may combine the grievances of several individuals if the grievances are essentially the same, and render one decision applicable to all the individuals if more than one individual is concerned or dissatisfied about the same matter. If management combines grievances, a grievant who has filed a separate grievance does not lose the right to represent himself or herself.

C. Actions.

Except as provided in paragraph D. of this Section (below) the procedure described in this Article applies to any employee or group of employees acting as individuals who make a request for personal relief in a matter of concern or dissatisfaction where relief may be granted by the Agency. Employees on temporary or limited term appointment may submit a grievance regarding their separation only where it is alleged, and evidence is presented, that separation was motivated by personal prejudice. However, it is noted that such employees may submit a grievance as to conditions of employment.

D. This Article does not apply to the following unless discrimination or other illegal acts are alleged:

1. The content of published policy of the agency;
2. Non-selection for promotion from a group of properly ranked and certified candidates;
3. An action terminating a temporary promotion within a maximum period of two years and returning the employee to the position from which the employee was temporarily promoted, or assigning him/her to a different position that is not a lower grade than the position from which he/she was temporarily promoted;
4. Failure to approve incentive awards including beneficial suggestions, quality step increases, performance awards, or any other kinds of honorary or discretionary awards;
5. Non-disciplinary memoranda which are informal in nature (such as letter of counseling, and warning) from a supervisor to an employee expressing areas of concern related to employees conduct or performance.
6. A grievance solely over the interpretation of this Agreement. However, the Union may grieve such matters under the provisions of Article 20.
7. Employees may not grieve contents (e.g. performance elements or standards) of an employee performance plan and decisions to grant or not grant a performance award or quality step increase except in cases of alleged discrimination.
8. Any claimed violation of Subchapter III of [Chapter 73 of Title 5](#), United States Code (relating to prohibited political activities);

9. Retirement, life insurance, or health insurance;
10. A suspension or removal under [Section 7532 of Title 5](#), United States Code (relating to National Security);
11. Any examination, certification, or appointment;
12. The classification of any position which does not result in the reduction in grade or pay of an employee; or
13. The termination of a probationary or trial period employee.

E. Except as provided below, the procedures in this Article shall be the exclusive procedures for the settlement of grievances and, therefore, grievances may not be taken outside NSF under statutory and administrative review procedures. There are three types of situations that may, at the option of a bargaining unit member, be raised under either the grievance procedures in this Article, or under a statutory procedure. They are:

1. Complaints alleging discrimination (see [Title 5, United States Code, 7121\(d\)](#) for specifics and for rights of appeal or review of final decision);
2. Complaints involving Agency actions based on unacceptable performance (see Title 5, United States Code, 7121(e) and (f) for specifics and for rights of appeal or review of final decision);
3. Complaints involving adverse actions for cause as defined in [Title 5, United States Code, 7512](#) (see Title 5, United States Code, 7121(e) and (f) for specifics and for rights of appeal or review of final decisions).

#### Section 4      **Definitions.**

As used in this Article:

A. Employee or grievant: An employee in the bargaining unit who asserts a grievance, an employee previously in the Bargaining Unit who asserts a grievance which arose while in the Bargaining Unit, or a former employee, in the Bargaining Unit at the time of separation, who asserts a grievance concerning his/her separation.

B. “Grievance” means any written and signed complaint by bargaining unit employees for personal relief which may be granted by the Agency and is not excluded under Section 3 of this article which meets the following:

1. By any bargaining unit employee(s) concerning any matter relating to the condition of employment; or
2. By any bargaining unit employee(s), authorized Union representative of the bargaining unit, or agency concerning:
  - a. The effect of interpretation or a claim of breach of the collective bargaining agreement; and
  - b. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

C. “Representative” means an individual designated by the Union who acts and speaks for the grievant. Under the Federal Service Labor Management Relations Statute, a grievant in the Bargaining Unit may represent himself or herself but can only designate as a representative the Union.

1. If the grievant intends to designate a Union representative, documents and correspondence relating to the grievance will be sent to the Union President unless the President notifies the Labor Relations Office staff in writing to send such documents to a designated Union representative who will act on behalf of the grievant.
2. In order to assure the Union's right to have an opportunity to be present in those cases where the grievant has elected to represent himself/herself, the Union will be provided advance notice of meetings, to be held between the grievant and an Agency official, at which the grievance could be resolved.

**THREE OPTIONS:** When considering filing a grievance, bargaining unit employees may use the informal grievance process described in Section 5, the Alternative Dispute Resolution process under Article 21, but not both; or they may file a grievance under the formal procedure in Section 7 without using either of the aforementioned processes.

## **Section 5      Informal Grievance Procedure.**

A.      The Parties agree to make their best efforts to resolve any dispute on an informal basis. Employees shall be given an opportunity for informal resolution of grievances at any phase of the procedure.

B.      A grievant may withdraw a grievance at any time.

C.      The employee may discuss the grievance either orally or in writing with the immediate supervisor within twenty (20) calendar days, of the Grievant's knowledge of a grievable matter; to start the informal procedure. If the grievant designates a Union representative; the grievant and representative will discuss the complaint with the immediate supervisor within twenty (20) calendar days of the Grievant's knowledge of a grievable matter, to start the informal procedure. If the grievance involves the relationship between the employee and his/her immediate supervisor, it may be presented to the next higher level of supervision. During the period of fourteen (14) calendar days following the initiation of the informal grievance process, the supervisor shall seek such information and advice as he/she deems necessary to attempt to reach a mutually satisfactory adjustment and shall answer the grievance within such time. If a decision is not rendered within the aforementioned fourteen (14) calendar days, the employee(s) may invoke the formal grievance procedure, refer to Section 7, of this Article.

D.      As an alternative means, the Parties may use the ADR Program as a substitute to the informal grievance procedure, refer to Article 21.

## **Section 6      Time Limits.**

An informal and formal grievance concerning a particular act or occurrence must be submitted to the Labor Relations Office (LRO). The LRO will forward the grievance to the immediate supervisor or next level of supervision within twenty (20) calendar days of the action or date the employee became aware of it.

1. Failure of the Agency as respondent or the Union in responding to an Agency grievance to meet established time limits will permit the grievance to advance to the next step.
2. A grievance concerning continuing matters may be presented at any time.
3. Alleged violations, which predated the twenty (20) calendar day window, are untimely and will not be considered grievable by the Parties or an arbitrator.
4. Time limits specified for each step of this procedure shall be computed from the day after the receipt of the grievance or an appeal by the Agency and from the day after the receipt of a response by the Union.
5. Grievances filed by the Union on behalf of a group of four (4) or more employees, must be filed within thirty (30) calendar days of the date of the action being grieved or when the grievant could reasonably be expected to have learned of the action being grieved.

#### **Section 7      Formal Grievance Procedure.**

An employee desiring further consideration of a grievance after the procedure in Section 5 of this Article is completed, must commence a formal grievance within (20) calendar days of receipt: if an answer is not rendered or if the employee(s) is not satisfied with the answer.

##### **A.      Step 1, Grievance Proceedings.**

1. If an informal grievance procedure was not invoked, the grievant(s) shall have twenty (20) calendar days to file a Step 1 grievance. Grievances must be submitted in writing to the Labor Relations Office (LRO). Any attachments to the grievance will become part of the record and remain attached during the grievance process. The LRO will forward the grievance to the appropriate Step 1 management official and inform the Union of the name, title, organization, and office telephone number of the deciding official.
2. Within fourteen (14) calendar days after receipt of the grievance, the Step 1 official must hold a meeting if one is requested by the grievant or representative. The meeting is intended to provide the opportunity for the employee to present and discuss

aspects of the issues giving rise to his or her grievance with the management official in an attempt to clarify issues and find an appropriate resolution.

- a. If no meeting is held, the Step 1 official will issue a decision in writing no later than twenty (20) calendar days after the grievance was filed.
  - b. If a meeting is held, the Step 1 official must issue a decision within ten (10) calendar days after the meeting. The decision will either: grant, partially grant, or deny the relief sought with explanation.
3. The Step 1 decision will include the name, title, organization, and office telephone number of the Step 2 official. Meetings will be held using the most efficient manner for all parties whether in person, by conference call, video teleconference or other means.

**B. Step 2, Grievance Proceedings.**

1. If the Step 1 answer does not resolve the grievance, the grievant or their representative may submit a Step 2 to the appropriate (deciding) official.
2. Within ten (10) calendar days after receipt of the grievance, the Step 2 official must hold a meeting if one is requested by the grievant or representative. The meeting is intended to provide the opportunity for the employee to present and discuss aspects of the issues giving rise to his or her grievance with the management official in an attempt to clarify issues and find an appropriate resolution.
  - a. If no meeting is held, the Step 2 official will issue a decision in writing no later than twenty (20) calendar days after the grievance was filed. The decision will either: grant, partially grant, or deny the relief sought with explanation.
  - b. If a meeting is held, the Step 2 official must issue a decision with explanation within ten (10) calendar days after the meeting. The decision will either: grant, partially grant, or deny the relief sought with explanation.
3. This decision shall be the final Agency decision on the grievance. If the decision is not acceptable, the Union may refer the matter to Arbitration.

## **Section 8      Cancellation of Grievance.**

A grievance will be cancelled:

1.      At the grievant's request;
2.      Upon death or termination of the grievant's employment with the Agency unless the personal relief sought by the grievant may be granted after death or termination of employment; or
3.      For failure to prosecute the grievance if the grievant does not furnish required information and duly proceed with the advancement of his/her grievance.

## **Section 9      Grievances Resolution and Settlement.**

A.      Decisions by the responding party to grant a requested remedy, at any point during the grievance process do not set precedent for future grievances.

B.      Copies of relevant documents cited in the decision will be provided if they are not otherwise readily available to the employee.

C.      Settlements must be reduced to writing and may not conflict with the terms and conditions set forth in this agreement without the express written consent of the Union President or designee and the Labor Relations Officer or designee. This provision covers all settlements of grievances, including those reached through mediation.

## **Section 10      Use of E-Mail in the Grievance Process.**

A.      All initial grievances require an original signature at filing and proof of service regardless of the type of grievance or where the grievance enters the process. A grievance decision at any step in the process may be issued via email, the email will be considered received on the first workday after the day of transmission of the email. Grievances filed under Section 7 of this Article may also be advanced via email through the remaining steps in the process. When advancing a



grievance via email, the employee or the Union representative (whichever is applicable) must request an oral presentation or the oral presentation will be considered waived for that grievance step.

B. If a grievance is advanced or a grievance decision is transmitted via e-mail, the email will be considered received on the first workday after the day of transmission of the email.

## Section 11 **Arbitration Process.**

A. Invocation of Arbitration. In the case of any grievance (Employee, Union, Agency), arbitration can be invoked only by the Agency or the Union within twenty (20) calendar days from the decision on a grievance. If the arbitration invocation is withdrawn or a deadline not met, the last preceding Agency or Union written response will be considered final.

1. Within seven (7) calendar days from invoking arbitration, the moving party will request from the Federal Mediation and Conciliation Service (FMCS) a list of seven (7) impartial persons to act as arbitrators from the appropriate geographical area.
2. The Parties will have fourteen (14) calendar days to review the list. Then they will meet on the next business day to select the Arbitrator.
  - a. This meeting may be postponed by mutual consent.
  - b. The Parties shall each strike one (1) name from the panel alternately, then repeat this procedure until there is only one remaining arbitrator. The remaining arbitrator shall then be selected.
  - c. The party to strike the first name from the list shall be chosen by a flip of a coin.
3. Upon selection of the arbitrator, the Parties shall jointly communicate with the arbitrator and one another to select an agreeable date for the submission of prehearing motions and responses, if any, and establish a date for the hearing.
4. Either party may empower the FMCS to make a direct designation of an arbitrator to hear the case in the event of undue delay.

5. Hearings over employee grievances shall take place at the site where the employee works.
6. The moving party must provide the arbitrator with a copy of this agreement no later than forty-five (45) calendar days prior to the date of the hearing.

**Prehearing Matters:** The Parties shall communicate in advance of the arbitration hearing in an attempt to agree on a joint submission of the issue(s) for arbitration. If the Parties fail to agree on a joint submission, each party will prepare a statement of what it believes the issue(s) to be with a copy to the other party but may not raise new issues that were not timely and properly raised in the informal and formal grievance.

B. The grievant and employees who are called as witnesses will be excused from the performance of their normal duties to the extent necessary to participate in the arbitration proceedings and during such times these employees shall continue in a pay status.

C. Each party will be entitled to have one (1) representative and one (1) technical advisor at each hearing.

## Section 12. **Authority of Arbitrator.**

The Agency and the Union agree that the authority of the chosen arbitrator will be confined to the issues in dispute.

A. The arbitrator will have no authority to add to, subtract from, alter, amend or modify any provision of this Agreement; or impose on either the Agency or the Union any limitation or obligation inconsistent with the terms of this Agreement or with existing Agency practices and policies not altered by this Agreement.

B. The arbitrator may retain jurisdiction over a case when necessary to clarify the award and to hear motions for attorney fees and will retain jurisdiction in all cases where exceptions are

taken to an award and the Federal Labor Relations Authority sets aside all or a portion of the award.

C. Arbitration proceedings will be conducted at the National Science Foundation on Monday through Friday, during business hours. Except for the return of an employee on official travel, no travel or transportation expenses will be borne by the Agency for an aggrieved employee(s) or his/her/their representative in connection with arbitration proceedings.

D. The grievant(s) and the Union representative, if the representative is an employee of NSF, shall be on official time while participating in arbitration proceedings, but under no circumstances will overtime or compensatory time be authorized, earned, or performed in connection with such proceedings.

E. No public disclosure of any nature will be made by either party to this Agreement during the course of arbitration proceedings concerning what transpires in any matter, except by mutual consent of the Union, the Agency, and the grievant(s). A final decision by the Arbitrator may be disclosed with the consent of the grievant(s).

### Section 13. **Cost.**

A. The arbitrator's fees and expenses shall be borne equally by the Parties to the arbitration.

B. In the event either party requests the cancellation or postponement of a scheduled arbitration proceeding which causes an arbitrator to impose a cancellation or postponement fee, the party requesting such cancellation or postponement shall bear the full cost of the cancellation/postponement fee. In the event the Parties agree to settle or postpone the arbitration during the period of time in which the arbitrator will charge a cancellation/postponement fee, the Parties will equally bear the cost of the fee, unless the Parties agree otherwise.

C. Each party will be responsible for their costs related to arbitration unless otherwise specified in this article.

**Section 14. Decision.**

The arbitrator's decision will, within the limits set by this Agreement, address those, and only those issues properly presented by the Parties.

A. The arbitrator's decision will be rendered, if possible, within thirty (30) calendar days of the end of the hearing and will be binding on each party to the proceeding. It is understood that either the Union or the Agency may file an exception(s) to an arbitrator's decision with the Federal Labor Relations Authority under regulations prescribed by the Authority.

B. The provisions of 5 U.S.C. section 5596(b) including those regarding attorney fees may, if applicable, be applied by an arbitrator.

C. Either party may ask an arbitrator to clarify his/her decision if necessary.

D. If any portion of an arbitrator's decision is invalidated on appeal, the matter may be remanded by the appellate body to the arbitrator if necessary to apply the decision on appeal.

**Section 15. Liberal Construction.**

The intent of this Article is to secure just, speedy, and inexpensive determination of grievances. Clerical errors not affecting the rights of a party shall be disregarded at every stage of proceeding under this Article.

## Article 20, Union-Agency Grievances

### Section 1      **Purpose.**

A.      A grievance under this Article is any dispute or complaint between the Agency and the Union that may pertain to any of the following:

1.      Any matter involving the interpretation, application, or violation of this Agreement; and
2.      Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

B.      At any time during the term of this Agreement, and thirty (30) calendar days after delivering a written grievance to the Labor Relations Officer or Union President, as appropriate, specifying the matter(s) grieved, the Union or Agency may, unless the matter is resolved by negotiations between the Parties during said period of 30 calendar days, submit a matter to arbitration, in accordance with the arbitration provisions, refer to Article 19.

### Section 2      **Union Grievance Proceedings.**

A.      Union grievances shall be initiated in writing by the Union President and presented to the Labor Relations Officer, or designee within thirty (30) calendar days of the receipt of the action or the condition giving rise to the grievance. Decisions by the Agency, with explanation, will be communicated to the Union President by the Labor Relations Office no later than thirty (30) calendar days following receipt of the grievance.

B.      If the grievance is not settled by the written decision, the Union may invoke arbitration within thirty (30) calendar days. If the Union does not invoke arbitration, the grievance shall be considered closed.

Section 3      **Agency Grievance Proceedings.**

A.      Agency grievances shall be initiated in writing by the Labor Relations Officer and presented to the Union President, or designee within thirty (30) calendar days of the receipt of the action or the condition giving rise to the grievance. Decisions by the Union, with explanation, will be communicated to the Labor Relations Office by the Union President no later than thirty (30) calendar days following receipt of the grievance.

B.      If the grievance is not settled by the written decision, the Agency may invoke arbitration within thirty (30) calendar days. If the Agency does not invoke arbitration, the grievance shall be considered closed.

## Article 21, **Alternative Dispute Resolution (ADR) for non-EEO Disputes**

### Section 1 **Background.**

The Agency is committed to providing a mechanism to help employees resolve workplace disputes in a safe impartial environment and as quickly as possible. The Alternative Dispute Resolution (ADR) for non-EEO Disputes program seeks to encourage healthy workplace relationships and the promotion of a positive work environment. As such, ADR is intended to be an early intervention process which mediates employee issues via facilitation by a neutral third party.

The NSF ADR non-EEO program will be administered as a pilot program according to [Appendix C](#).

### Section 2 **Coverage.**

- A. ADR is an optional early intervention process which will take place prior to filing a negotiated grievance. Participation is voluntary.
- B. The ADR program will be afforded to all NSF bargaining unit employees.
- C. All issues can be brought to ADR, unless excluded by this policy.
- D. Exclusions:
  - 1. This process is not intended to address issues related to Equal Employment Opportunity (EEO). Participants seeking resolution of EEO-related issues are encouraged to contact the Union or ODI for further assistance.
  - 2. ADR does not apply to Merit Systems Protection Board (MSPB) matters, adverse actions, retirement, health benefits or worker's compensation.

### Section 3      **Process and Timelines.**

- A.      The process will serve as the “informal” grievance step. Timelines to initiate a formal grievance will be held in abeyance by the Agency; and will be shared with the employee in writing, during the processing of an ADR request.
  
- B.      A request for ADR must be filed through the ADR Specialist within thirty (30) calendar days after the occurrence or knowledge of occurrence.
  
- C.      The ADR Specialist will conduct an intake review to determine if the occurrence is appropriate for the ADR process. If the occurrence is deemed eligible by the ADR Specialist, the Parties will execute an Agreement to Mediate. If the occurrence is deemed ineligible by the ADR Specialist, the employee will be advised of next steps, including the right to file a formal negotiated grievance, where applicable.
  
- D.      If appropriate, the ADR Specialist will schedule the mediation accordingly.
  
- E.      A mediator is expected to conduct the mediation within forty-five (45) calendar days from receipt of the ADR request.
  
- F.      If the mediator is delayed in the performance of work or interrupted by failure of the Agency or the employee to act within a reasonable time, the ADR Specialist will be notified accordingly, and an attempt will be made to resolve the delay as quickly as possible.

### Section 4      **Mediator Roles and Responsibilities.**

- A.      All mediators and facilitators will be certified and qualified to perform ADR/facilitation services.
  
- B.      The Agency will provide the services of outside mediators and facilitators for this ADR program.



C. The ADR mediator is independent and impartial “third-party” and does not act as an advocate or representative for either the employee or management, nor do they perform the functions of either a union or management representative. At all times, however, the mediator conducts the session(s) in a manner that respects those roles.

#### **Section 5 Participants Roles and Responsibilities.**

A. The Agency is responsible for providing dedicated space, resources, and other necessary accommodations for ADR services.

B. Participants are expected to adhere to the confidentiality guidelines outlined in the Agreement to Mediate.

#### **Section 6 Settlement Terms and Review.**

A. A copy of the mediation outcome and signed Agreement to Mediate will be shared with all mediation participants at the end of the mediation session.

B. All ADR settlement agreements must be in writing and signed by relevant parties.

C. If the mediation is unsuccessful and concludes without a settlement agreement, a Termination of Mediation notice will be completed by the ADR Specialist and provided to the participants.

D. ADR settlement documents will be submitted to the Office of General Counsel (OGC) for legal sufficiency to ensure they do not contradict with federal statute, government-wide rules and regulations, and agency policies.

E. A notice denoting the mediation outcome will be made available to the Union within seven (7) calendars days of the Union’s written request to the ADR Specialist. The outcome will indicate that the matter was either “Resolved” and a copy of the Settlement provided to the

Union or the matter will be noted as “Unresolved” and the employee or Union may pursue other options at their discretion.

## Article 22, Awards

### Section 1      **Awards and Recognition.**

- A.      The Agency and the Union acknowledge the importance of recognizing employees for quality contributions to the Agency and its mission. The Parties agree that when feasible and to the extent practicable, timely recognition and encouragement by the Agency of an employee's performance is an important incentive, increases employee job satisfaction, and contributes to the overall quality of work performance.
  
- B.      Awards and quality step increases will be processed in a reasonable and timely manner.
  
- C.      Awards will be granted in a consistent and objective manner without discrimination, and in accordance with applicable laws, rules and regulations, and within applicable budget limitations.
  
- D.      It is recognized by the Parties that all awards should be issued in the best interest of the Agency, its employees, and the American taxpayer.

### Section 2      **Types of Awards.**

The Agency Awards may include but are not limited to: Director's Awards, in coordination with the Union; performance awards, Quality Step Increases (QSIs), Time Off Awards, On-the-Spot Cash Awards, and Special Act Awards; on the basis of merit, to individuals or groups, if they meet the conditions for such, e.g. level of performance rating and if they have been under a performance plan for the minimum period of time to be rated).

## Article 23, Reduction in Force

### Section 1      **Introduction.**

This Article contains the procedures for effecting Reduction in Force (RIF) actions. The provisions of this Article apply to all employees in the Bargaining Unit. The Agency shall follow the Civil Service Regulations set forth in 5 CFR Part 351.

### Section 2      **Procedures.**

The procedures listed below are intended to afford employees an opportunity to compete for retention when their positions have been affected after the NSF has formally announced a RIF.

A.      Before formal reduction in force procedures are initiated, the Agency will make serious efforts, in accordance with applicable laws and regulations, to place surplus personnel in suitable positions as provided in this Article. To the extent appropriate, the NSF will use attrition to accomplish the reduction in force prior to initiating reduction in force procedures.

B.      Initiating Actions. Since it is possible to affect more than one Office or Division by a reduction in force action, all proposed reductions in force must be approved by the NSF Director. Memoranda requesting reduction in force actions will be forwarded to the NSF Director through the appropriate Assistant Director or other official reporting to the Office of the Director.

C.      Communicating with the Union. The Agency will notify the Union, of any impending reduction in force affecting an employee in the bargaining unit, at the earliest practicable date. This will follow after a determination has been made that a position or positions will be abolished, and a competing employee will be released from a competitive level by separation, demotion, furlough for more than 30 days, or reassignment requiring displacement. This applies when the NSF Director has approved the initiation of a reduction in force. The Agency will provide information relating to the potential impact of a RIF to the extent practicable.

### Section 3      **Retention Registers.**

The Agency will provide the Union with a copy of each retention register affecting an employee in the bargaining unit as soon as practicable after it has been prepared and will make available to the Union the documents used to develop such registers. Employees with appointments limited to one year or less are not assigned to groups and subgroups and do not compete for retention in the first round or for assignment to positions in other competitive levels in reduction in force. They must be moved out of the competitive level by appropriate means before any employee is released from the competitive level by reductions in force. Employees serving in positions in a competitive level under definitely limited temporary promotions are not competing employees in that level. Their temporary promotions must be terminated before any competing employee is released from the competitive level by reduction in force. Employees who have received a written decision of reduction in grade based on unacceptable performance are not competing employees in the competitive level of their current positions (these employees will compete on the basis of the competitive level to which they will be demoted).

### Section 4      **Excepted Positions.**

A.      Employees in excepted positions will compete only with other excepted employees in the same competitive level. Employees in excepted positions will not have assignment rights to excepted positions held by employees in other competitive levels. However, before a final decision is made to abolish a position which would initiate the application of reduction in force procedures, NSF will make a serious effort to reassign the current incumbents of excepted positions which are to be abolished in an attempt to avoid the necessity of conducting a RIF. Such employees will be considered for reassignment to positions for which the Agency is actually recruiting. This provision is applicable only before reduction in force provisions are applied. The Agency is not required to fill a vacancy in reduction in force with either an excepted or a competitive employee once it has been determined that a position will be abolished and a reduction in force has been approved by the NSF Director.

1.      In the event of a RIF, a conversion of employee from a position in the excepted service to a position in the competitive service will not be made effective during the

period beginning with the issuance of reduction in force notices and ending when RIF actions are completed. HRM will provide guidance to the employee upon request on the procedures for obtaining eligibility for conversion.

B. REVIEW

1. Within ten workdays of receipt of a specific RIF notice, an affected employee who believes that an error exists in the retention register applicable to him or her or in the determination of entitlement to assignment rights may request a review concerning such alleged error. The request may be made personally or by a representative designated in writing by the employee. Such request shall be made in writing to the HRM Director and shall identify and explain the error or errors perceived in the application of RIF procedures. The review will be conducted by an individual, selected by the HRM Director who was not involved in the initial determination. However, matters which are reserved management rights such as decisions on work assignments and organizational structure are not appropriate for such review. Also, the opportunity for such review shall not provide the means for an employee to add information such as additional qualifications to his or her official personnel records because it is the employee's responsibility to assure that the records have been updated prior to RIF.
2. The affected employee will be given a response in writing by the selected reviewer to the request for review as soon as practicable. If a response cannot be provided within 20 calendar days from the date of the specific RIF notice, the effective date of the proposed action will be extended by the number of days in excess of 20 that it takes for a response.
3. The decision of this review is not grievable. However, an employee is entitled to appeal a reduction in force action as set forth in the Agency Grievance Procedure.
4. Employees who cannot be assigned will be separated (or furloughed for more than 30 days as the case may be) not earlier than 30 calendar days after receipt of the appropriate notice. The day following delivery of the notice will be counted as the first day in computing the 30 days' notice.

5. A liberal leave policy will be followed to give employees the opportunity to seek employment outside the Agency. When an employee is officially notified that he or she is to be released or downgraded by more than three grades under the provisions of this Article, the employee's supervisor will make serious efforts to accommodate, within the NSF provisions, the employee's search for other employment.

C. Transition Appointment.

1. In order to prevent undue hardship on an employee who would not otherwise have pay, a temporary transition appointment will be offered if all the following conditions apply:

- a. The individual is a competing employee who is being separated as a result of reduction in force provisions;
- b. The individual is not eligible upon separation for at least 13 weeks of severance pay;
- c. The individual receives and provides a copy to HRM on or before the day of separation from the Agency a valid written offer of regular employment which is to begin within 90 days of the day of separation;
- d. The Agency has funds available;
- e. The appointment can be made within the Agency's authorized ceiling; and
- f. There is no directive or regulation at the time which would preclude such action.

2. Conditions of such a temporary transition appointment are:

- a. The individual will be offered a temporary appointment to become effective the day following a separation through RIF; and
- b. The temporary appointment will be for the period until the new employment begins provided that the length of the temporary transition appointment will be reduced on a day for day basis by severance pay entitlement under existing regulations.

## **Section 5      Reemployment Priority Lists (RPL).**

The Division of Human Resource Management will prepare and maintain, on a current basis, reemployment priority lists of separated Group I or II employees who have competitive Civil Service status. It will be mandatory for these lists to be used for any subsequent recruitment activity. Separated Group I employees will remain on the RPL for up to two years: Group II employees for up to one year.

## **Section 6      Outplacement Program.**

HRM will establish an outplacement program, as described below, for all employees to be separated by reductions in force. HRM will have the outplacement program in place at least 30 days prior to the effective date of such separation. The provisions of the program will remain in effect a minimum of 90 days after the date of separation of an employee through RIF, unless all separated employees have been placed.

1. Participants in the outplacement program will have access to the use of computers and copy equipment for use in preparing documents necessary for seeking employment, i.e., resumes, related correspondence.
2. HRM will have available:
  - a. information on grievance rights and procedures;
  - b. information on appropriate OPM registers, and outplacement assistance; and
  - c. reference materials on job hunting (The Union may suggest sources).
3. HRM will provide counseling on effective job searching and will assist participating employees in evaluating their qualifications and setting reasonable employment goals. If five or more employees are to be separated, HRM will consider obtaining these services from outside NSF.
4. HRM will provide the following employment assistance:
  - a. websites that list Federal, state and local government opportunities;
  - b. websites that list private sector employment opportunities;



- c. A letter of certification stating that the employee is eligible under Interagency Career Transition Assistance Program (ICTAP).
- 5. A list of names and the resumes of all separated excepted employees will be circulated to each Directorate for consideration for reemployment as appropriate vacancies occur. Notwithstanding any earlier termination of the outplacement program, these lists will be maintained in the directorates for one year.
- 6. Training. To the extent practicable, the Agency will consider utilizing the provisions of 5 U.S.C. 4103 when it has been determined that NSF employees will otherwise be separated under reduction in force and because of this would be entitled to severance pay.
- 7. As an aid in seeking further employment and as evidence of the Agency's appreciation of a job well done, each employee to be separated should be furnished by the Division or Office undergoing reductions in force an individual letter indicating the employee's specific contributions to the organization. This letter is in addition to the required reduction in force notice.

## **Section 7      Personnel Office Assistance.**

The Division of Human Resources Management (HRM) will render advice and assistance to both senior management and employees in matters related to reductions in force. This assistance will include the following:

- A. Senior Management.
  - 1. Participate with senior management in the initial planning of reductions in force by making available official records and interpreting appropriate regulations for the purpose of determining the impact of reduction in force actions in the affected organizational unit.
  - 2. Represent the Agency in dealings with the OPM by being the focal point for information requested on reduction in force actions.
- B. Employees.

1. Make available appropriate records and regulations concerning reductions in force to employees and explain the procedures that are followed in carrying out reduction in force actions.

2. Conduct an active outplacement program to assist affected employees in finding suitable employment with other Government agencies and outside of Government.

C. Union.

Cooperate with the Union in explaining how the provisions of this Article are being applied during any reduction in force.

## Section 8 **Personnel Records.**

A. The Parties hereto emphasize the importance of keeping employees' Official Personnel Folders current and accurate. The Parties recognize that individual employees as well as management have a responsibility concerning personnel records. Employees should review their Personnel Folders periodically, update their qualifications and other appropriate matters of employment history when changes or inaccuracies come to their attention, and initiate appropriate corrective action when necessary.

B. Retention registers which may determine who is affected by a RIF are dependent upon official position descriptions in the records at the time of the RIF as well as other information on file. Assignment rights are based on qualifications shown in the employee's Personnel Folder at the time that HRM makes RIF determinations for issuing specific notices-qualifications not set forth cannot be considered. The absence of any document in an Official Personnel File (OPF) which bears on the qualifications of the employee and which is the responsibility of HRM to maintain in OPF's consistent with OPM regulations prescribing the contents of OPF's, and which the employee can establish had been given to HRM, will be sufficient reason to make a new assessment of employee's assignment rights.

C. Supervisors and employees should assure that current position descriptions are accurate and that copies of awards, commendations, and training reports or certificates are forwarded to

HRM for filing as appropriate in employees' eOPF's. Consistent with OPM regulations prescribing the contents of eOPF's, HRM is responsible for promptly inserting records of such commendations, awards, and training reports which are provided to HRM in the employee's eOPF.

D. In order to remind employees of the importance of updating their OPF's, the Agency will include as a part of the performance appraisal form a notice reminding employees of the importance of updating records pertaining to them.

E. The Agency shall preserve intact all registers and records relating to an employee for at least one year from the date the employee is issued a specific reduction in force notice.

## Article 24, Merit Promotion

### Section 1      **Introduction.**

The Agency and the Union agree that the purposes and intent of this Article are to ensure that employees are given full and fair consideration for advancement and to ensure selection from among the best qualified candidates. The provisions affecting applicants in the Bargaining Unit are contained in this article.

A.      The Agency and the Union agree that positions in the Bargaining Unit will be filled on the basis of merit in accordance with the systematic and equitable procedures provided for in this Article.

B.      It is further agreed that this Article will be administered in such a way as to maximize employee confidence and to achieve the purposes of this Article as simply and efficiently as possible.

C.      The Parties specifically affirm the goals of maximizing utilization of employees, providing incentives for performance, and dealing fairly with employees, while avoiding undue delays and unnecessary paperwork.

D.      Pre-selection or any sort of undue influence on the selection process is contrary to the principles and objectives of merit staffing provisions and will not be condoned. Evaluation and selection of candidates for promotion will be based on job-related considerations.

E.      The competitive service consists of all civilian positions in the Federal government which are not specifically excepted from the Civil Service laws by or under statute, by the President, or by the Office of Personnel Management (OPM). In the NSF, generally, all positions are in the competitive service except:

1.      Positions authorized by the NSF Act (NSF excepted positions);
2.      SES positions;
3.      Positions placed in Schedules A, B, C, and D by OPM regulation;

4. Expert and Consultant positions. An expert position is one that requires the services of a specialist with skills superior to those of others in the same profession, occupation, or activity to perform work on a temporary and/or intermittent basis on issues, problems, or questions presented by a Federal official; and
5. Positions filled under Noncompetitive hiring authorities (see Section 3 of this Article).

## Section 2      **Personnel Actions Covered by Merit Promotion.**

Competitive procedures shall apply to all promotions under 5 CFR 335.102 and to:

- A. Time-Limited promotions for more than 120 days to higher graded positions. Prior service during the preceding 12 months under noncompetitive time-limited promotions and noncompetitive details to higher graded positions or to positions with higher promotion potential counts toward the 120-day total. A time-limited promotion may be made permanent without further competition provided the time-limited promotion was originally made under formal competitive procedures and the fact that it might lead to a permanent promotion was stated in the job opportunity announcement;
- B. Details for more than 120 days to a higher graded position with more promotion potential than a position the employee previously held on a permanent basis in the competitive service. Prior service which counts toward the 120-day total is the same as described in (1);
- C. Reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in the competitive service;
- D. Reassignment to a position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service;

E. Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service.

F. Selection from an OPM register (certificate of eligible).

### Section 3 **Requirements.**

A. Personnel actions taken under merit promotion regulations, including the identification, qualification, evaluation, and selection of candidates, shall be made without regard to political, religious, marital status, race, color, ethnic group or cultural background, gender, sexual orientation, national origin, non-disqualifying physical or mental disability, and age shall be based solely on job related criteria.

B. The Agency shall provide guidance on Equal Opportunity, Merit Systems Principles and Prohibited Personnel Practices to any selecting official, chosen to select, screen, or otherwise assist in selecting personnel for civilian positions, training, or career development opportunities effected under merit promotion regulations.

C. The Agency will perform an analysis to determine the pertinent competencies for the position prior to the position being announced. The analysis will be performed by staffing Human Resource Specialists in the Division of Human Resource Management (HRM) in consultation with an appropriate subject matter expert (which may include employees from the Bargaining Unit), from the criteria outlined in the official position description.

### Section 4 **Vacancy Announcements.**

A. Except for actions covered under 5 CFR 335.103 (c)(2) and (3), the Agency will officially announce all competitive service vacancies on the NSF career website and USA Jobs. Notifications to employees may also include the circulating of special issuances to potential

applicants to allow qualified candidates within the area of consideration to learn of the vacancy and to apply for it.

B. Concurrent consideration may also be given to fill positions from other appropriate sources such as transfer, reinstatement, non-competitive hiring authorities or OPM authorized certificates of eligible persons.

C. The minimum area for advertising all positions covered by this Article will be the National Science Foundation in the Washington, D.C. metropolitan area.

D. Standing registers for advance application will be maintained for certain administrative positions under this Article, such as, but not limited to, Program Assistant or Program Specialist. Standing registers may be cancelled and re-established with updated applications after they have been in existence for a reasonable and practicable period of time, usually every 4 months. The existence of standing registers will not preclude advertising and filling any competitive position under a separate vacancy announcement if such action is affected in accordance with all other provisions of this Article.

E. If a vacant position, for which a standing register exists, is advertised individually instead of using the standing register, the vacancy announcement will explain that standing register candidates will not automatically receive consideration and must specifically apply to be considered.

F. Minimum qualifications standards will be those prescribed by the U.S. Office of Personnel Management and other job-related knowledge and skills as determined by the staffing HR Specialist and selecting official. If selective factors are recommended by the selecting official, they will be in writing with specific justification, and require approval from HRM.

G. If additional qualification requirements are determined to be necessary after the vacancy announcement has been posted, the announcement will be cancelled, and a new announcement will be issued.

H. The classification of an applicant's current position shall not be a cause for disqualification from any vacancy in a higher-level position in a different series if he/she otherwise meets the minimum qualifications requirements for such vacancy.

At a minimum, announcements will include:

1. Title, series, and grade;
2. Geographic and organizational location;
3. Area of consideration;
4. Announcement number, issue and closing date;
5. Known promotion potential;
6. Summary statement of duties based on approved position description;
7. Qualifications requirements including OPM educational requirements;
8. Quality Ranking Factors or Competencies;
9. Special or selective factors which are essential to successful performance in the position to be filled;
10. Number of Vacancies — it is acceptable to use "FEW"
11. Location, email address, and telephone number where additional information may be secured;
12. Where applications should be sent, and which forms are required; (e.g., resume, SF-50);
13. Statement of equal employment opportunity.
14. Reasonable accommodation statement; and
15. Telework eligibility.



I. Announcements for competitive vacancies will generally be open for a minimum of 15 calendar days – not counting the last week of the calendar year.

#### **Section 5      Application Process.**

All application materials must be received online by the closing date of the announcement. If evidence supports that the website for accepting applications was not accessible or failed at the time of the vacancy announcement closing (11:59 p.m. eastern time on the closing date), HRM will review the circumstances and accept applications on a case-by-case basis.

#### **Section 6      Evaluating Candidates.**

A. The Agency will determine that all applications received are screened to meet OPM qualification standards including any selective placement factors (e.g., special required skills or proficiencies). A qualified staffing Human Resources Specialist in HRM will perform the evaluation to determine whether candidates are minimally qualified for a position. Candidates must meet the qualification and time-in-grade requirements within 30 days from the closing date of the announcement.

B. The Agency will further evaluate all applicants who meet the minimum qualifications against the competencies identified in the vacancy announcement using an assessment tool. The Agency's automated staffing system for the intaking of applications will rank the qualified candidates based on the candidates' responses to criteria in the assessment tool.

C. On rare occasions, a Subject Matter Expert (SME) may be used to evaluate the technical qualifications of candidates' applications in determining basic qualifications in consultation with HRM. A SME is defined as a person with bona fide expert knowledge about what it takes to perform the work of a particular position. Any individual at or above the grade level of the position being filled with current and thorough knowledge of the position's requirements may serve as a SME. However, the SME cannot be in the chain of command of the selecting official.

D. All candidates whose scores are above a pre-described threshold that is established prior to the posting of the announcement will be referred to the selecting official in alphabetical order. The referral instructions provided to the selecting official will communicate that the selecting official may choose among any of the applicants without regard to order.

E. A candidate's formal performance appraisal may be considered by the selecting official during the evaluation process if the appraisal was provided voluntarily by the candidate.

F. Evaluation of candidates will be based on a review of the information contained in the candidates' application package, to include length of experience, level of education, training, and special accomplishments when related to the requirements of the position.

#### Section 7      **Selection Process.**

A. Management has the right to select or non-select from among a group of properly evaluated and certified candidates or to select from other appropriate sources, such as reemployment priority lists, reassignment eligible, direct hire eligible, or those within reach on an OPM certificate.

B. The selecting official may conduct additional assessments of candidates on the certificates. These assessments must be approved in advance by HRM prior to the utilization of the assessments and must be applied to all candidates.

C. The selecting official will determine whether interviews will be conducted and whether or not to utilize a selection panel in the interview process.

1. Where no additional assessments are conducted by the selecting official, the selecting officials may select from the certificate with or without interviewing.
2. Where additional assessments are conducted by the selecting official after issuance of the certificate, interviews of candidates on the certificates are required before

a final selection can be made. However, selecting officials are only required to interview from the pool of candidates who submit responses to the assessments.

D. If interviews are conducted, the following protocol will be followed:

1. Competitive Certificates (promotion) — If interviews are conducted, a minimum of four (4) candidates must be interviewed, to include all current NSF employees on the certificate, unless the NSF employee fails to respond to an additional assessment.

2. NCBQ (Noncompetitive Best Qualified) and Special Appointing Authority Certificates (i.e., Schedule A, disabled veterans, etc.) — If interviews are conducted, a minimum of all current NSF employees must be interviewed unless the NSF employee fails to respond to any additional assessment. If there are not any current NSF employees on the certificate(s), the selecting official may at his/her discretion interview any number of candidates.

E. The selecting official will ask during interviews valid job-related questions that allow for an objective evaluation of the candidate's competencies as they relate to the position being filled.

F. When a face-to-face interview is not possible, a telephone interview is acceptable.

## Section 8 **Career Ladders.**

A. A career ladder is a series of positions of increasing difficulty in the same line of work through which employees may progress from the entrance level to the full performance level. The full performance level is the highest-grade level in the career ladder to which employees in the career ladder may be promoted noncompetitively. Employees shall be promoted as they demonstrate ability to perform at the next higher level. An employee may be promoted to the next level in the career ladder in 52 weeks after entering his/her current grade.

1. Career Ladder Development Plan (CLDP). The CLDP is a tool for the development of the employee's capabilities and competencies. The CLDP is designed to capture the differences in the scope of duties at the employee's current level and at the

next higher level in the career ladder. This tool also includes developmental activities and/or training in which the employee should engage to prepare him/herself for advancement in the career ladder. The CLDP must identify a) a clearly delineated description of the scope of job duties at the current or next higher grade level of the career ladder; b) relevant developmental activities and formal training, e.g. courses or seminars, required for promotion; and c) timeframes and needed resources to complete required actions within the twelve-month period in which the employee is at the lower grade level.

2. Employees will enter into a CLDP with the immediate supervisor. The CLDP must be signed by both the employee and supervisor within 60 days of the effective date of assignment to the career ladder position.

3. The supervisor will ensure that the employee has the opportunity to acquire pertinent skills and knowledge to demonstrate that he or she is ready for work at the next grade level. The immediate supervisor is required to monitor the employee's progress in meeting the expectations documented in the CLDP by providing a written assessment to the employee of the his/her progress towards attaining the skills required for promotion. This includes the employee's strengths and areas for necessary improvement. This assessment is required at least 90 days prior to the date the employee is eligible for promotion.

4. Supervisors shall promote employees in a career ladder position upon serving one year at their current grade level if their last performance rating of record was at least Fully Successful, and the employee has successfully completed all developmental and/or training activities in the employee's CLDP. If activities in the CLDP have not been successfully accomplished, then the supervisor must revisit the progress on the CLDP with the employee within six (6) months after the employee's one-year anniversary date assigned to the career ladder position. As soon as the CLDP activities have been met, the employee shall be promoted.

## Section 9      **Details.**

A detail is a temporary work assignment of an employee to a different position than the presently held position or, to unclassified duties with the employee returning to his or her previously held position upon completion of the detail. Details may be used to meet Agency temporary work requirements and to help provide career development opportunities for employees. Unless it is a temporary promotion, the employee's grade level and rate of pay does not change as part of the detail.

1. Employees will receive an email or memorandum from HRM documenting their assignment to a detail.
2. Details in excess of thirty (30) days will be processed in the Agency's payroll system and a SF-50 will be generated.
3. Any employee detailed to a classified position shall be given a position description of the position detailed upon request.
4. Details will generally not exceed one year in 120-day increments. Extensions beyond one year will require the approval of the Division Director for Human Resource Management.
5. Details to higher grade positions (or positions with known promotion potential) will be limited to 120 days without formal competition (posting an announcement on USAJOBS), during a 12-month period.
6. Details to higher graded positions (or positions with known promotion potential) lasting more than 120-days in a 12-month period must be subject to formal competition (posting an announcement on USAJOBS).
7. Details to unclassified positions may not exceed 120 days. Subsequent details to unclassified duties will require a new set of duties. The total of all subsequent details to unclassified duties may not exceed one year in 120-day increments.
8. To the extent practicable, managers will rotate employees to meet extended detail requirements.

## Section 10     **Temporary Promotions.**

A temporary promotion is a detail in which the employee assumes a higher-grade level if he/she meets the qualification and time-in-grade requirements for that higher-graded position.

1.     Temporary promotions of more than 120 days in a 12-month period must be the result of the employee competing formally through a job announcement on USAJOBS.
2.     Temporary promotions of 120 days or less do not require formal competition (posting a job announcement on USAJOBS).

## Section 11     **Notification.**

A.     The Division of Human Resource Management (HRM) will ensure that each applicant who files a timely application under a merit promotion vacancy announcement will have the opportunity to view the status of their application in the application system as to whether or not he/she meets the minimum qualifications requirements for the position.

B.     HRM will ensure that each -applicant will have the opportunity to view the status of their application in the application system as to whether or not he/she was or was not on the certificate issued for any vacancy for which the employee was considered.

C.     Review and Explanation. Within ten workdays after an employee who is a candidate has been notified of his/her non-placement on the certificate, the employee or his/her designated representative may request an explanation of non-placement on the certificate. Such requests may be made in writing to the Chief, Staffing and Classification Branch. The employee will explain briefly why he/she believes the review should be made. When such request is made, the employee or his/her designated representative will be given an explanation of the action within ten working days. This explanation shall be in writing if the employee requests it.

D.     Fact-finding. Where it is alleged that a violation of this Merit Staffing Article has occurred, the President of Local 3403 may notify the Agency's Labor Relations Officer that a review of the record be conducted by HRM. Such a request need not specify the names of the

individual or individuals directly involved, but it must specify the announcement number and the nature of the violation alleged. With due regard to Privacy Act considerations the Chief, Staffing and Classification Branch, shall notify the Union of the findings of the review.

## **Section 12 Remedies.**

A. This Article shall be interpreted in accordance with Office of Personnel Management regulations. Nothing in this Article shall in any way preclude individual employees from pursuing questions or complaints about the merit promotion plan or individual promotion actions. When an employee believes that the promotion plan procedures were not properly applied in his/her case, the employee should discuss the complaint with the Chief, Staffing and Classification Branch. The employee may be accompanied by a representative of his/her choice, if the employee so elects. If, after a full explanation, an employee still has a complaint, the employee may file a formal grievance in accordance with Article 19.

B. Where it has been established that a qualified employee failed to receive proper consideration in a competitive promotion action subject to this Article, and it is not feasible to set aside the action, the employee shall be given priority consideration for the next appropriate vacancy before candidates under a new promotion or other placement action are considered. An employee selected on the basis of this consideration shall be exempted from the requirement of competitive procedures, in accordance with Office of Personnel Management regulations. This paragraph does not mean that in connection with a grievance an arbitrator may not determine whether or not it is feasible to set aside the action in accordance with OPM regulations.

## Article 25, Position Classification

### Section 1      **General.**

The Parties agree to the principle of equal pay for substantially equal work as provided in [5 U.S.C. 5101](#), and as implemented in OPM issued classification standards.

A.      The Agency will maintain an adequate and accurate position description, for each position in the bargaining unit, that reflects major duties that management requires to be performed in the position. Each employee will be provided with a copy of the description of his/her position.

B.      Both supervisors and employees should be alert to assuring that employee position descriptions are adequate and accurate.

C.      When an employee believes that a material change has occurred in his/her position, and such change has not been reflected in the position description, the employee should bring this to the attention of the supervisor. If the supervisor agrees that the major duties and responsibilities currently assigned to the employee are not adequately reflected in the position description, the supervisor will submit a request for an amendment or redescription to the Division of Human Resource Management (HRM) for classification review. Part of this review may result in a desk audit of the position.

D.      Where language such as “other duties as may be assigned” appears in an official position description, such phraseology will mean duties as may appropriately be assigned. “Other duties” generally shall require less than 10% of an employee's time. If they require 10% or more of the time, some of these duties should be included in a revised position description so that the undescribed duties do not exceed 10%.



## Section 2      **Classification Appeals.**

Employees occupying positions subject to the [Classification Act of 1949](#) have a right to appeal the classification of their positions in accordance with OPM regulations and this Agreement. Employees in positions exempt from the Classification Act have a right to grieve the classification of their positions if it results in their reduction in grade or pay.

## Section 3      **Desk Audits Conducted by the Division of Human Resource Management.**

A.      Both the employee and the supervisor have the right to request a desk audit to be performed by the Division of Human Resource Management (HRM). When a desk audit is requested by either the supervisor, or the employee, the other party (supervisor or employee) should be informed. Desk audits are not appropriate when the position description only requires minor updates or edits to the description of the duties that would not affect the grade level. Once HRM has made the edits or updates to the position description, the updated changes will be provided to the supervisor of the position and the employee.

B.      To properly assess the position, HRM must do a thorough analysis of the position, which requires input from both the impacted employee and the supervisor. This input may be in the form of a questionnaire, an in-person interview, or both. In some instances, HRM may need to speak to other individuals who work with the impacted employee to gain additional insight and knowledge about the work in question. Failure of either the impacted employee or the supervisor to provide responses to HRM's questions may impact the ability to complete the desk audit.

## Section 4      **Desk Audits Conducted by the Office of Personnel Management.**

A.      Employees have the right to request a desk audit to be conducted by the Office of Personnel Management (OPM), or to appeal the results of a desk audit performed by HRM.

B. The desk audit of a position occupied by an employee in the bargaining unit will be scheduled in advance with the employee. The employee and their supervisor will be advised of the reason for the audit.

C. When the Office of Personnel Management (OPM) notifies the Agency that it intends to conduct an audit of a position occupied by a bargaining unit employee pursuant to a classification appeal, HRM will notify the employee and Local 3403.

D. The Union will be provided a timely notice of actions conducted by either the Agency or OPM, which will involve classification audits of bargaining unit employees.

## Article 26, Excepted Positions

### Section 1      **Introduction.**

The Agency and Union agree that the purpose and intent of this Article are to ensure selection from among the best qualified candidates in filling positions in the Agency excepted service under appointments not limited to three years or less.

A.      The Agency and Union agree that appointments to the Agency excepted service will be on the basis of merit in accordance with the systematic and equitable procedures provided for in this Article.

B.      It is further agreed that this Article will be administered in such a way as to maximize employee confidence and to achieve the purpose of this Article as simply and efficiently as possible.

C.      The Parties specifically affirm the goals of maximizing utilization of employees, providing incentives for performance, and dealing with employees, while avoiding undue delays and unnecessary paper work.

D.      Pre-selection or any sort of undue influence on the selection process is contrary to the principles and objectives of staffing provisions and will not be condoned. Evaluation and selection of candidates for appointment will be based on job-related considerations.

### Section 2      **Coverage.**

The NSF excepted service consists of all personnel and positions in the Foundation which are excepted from the Civil Service laws by [42 U.S.C. 1873\(a\)\(1\)](#), but does not include the members of the special commissions authorized by the National Science Board. The provisions of this Article apply to appointments to positions in the NSF excepted service in the Bargaining Unit, except the following:

- A. Appointments made for continuous periods, which in aggregate, would not exceed three years (i.e. the aggregate of term appointments, temporary appointments, and extensions would not exceed three calendar years, including breaks in service of less than one year).
- B. Reemployment of former Agency employees within one year of their separation from the Agency by reduction in force.
- C. Reemployment to former positions when employee is exercising reemployment rights.

### Section 3 **Locating Applicants and Publicizing Vacancies.**

Applicants for all positions covered by this Article shall be located through timely posting of vacancy announcements on USAJOB and the NSF Careers Page ([www.nsf.gov/careers](http://www.nsf.gov/careers)). This may also include the placing of advertisements in journals, newspapers, and magazines and the circulating of special issuances to potential applicants with sufficient notice to allow candidates to learn of the vacancy and apply for it.

- A. All vacancy announcements are posted on USA Jobs and to the NSF Careers page for the Local 3403 to view.
- B. The minimum area for advertising all positions covered by this Article will be the National Science Foundation in the Washington, D.C. metropolitan area.

### Section 4 **Determining Basic Eligibility.**

Each applicant who files a timely application under an excepted position vacancy announcement shall be given notice in writing as soon as practicable by the Division of Human Resource Management (HRM) as to whether or not he/she meets the minimum qualifications requirements for the position.

- A. Only a qualified Human Resources Specialist will determine whether a candidate meets minimum qualification requirements for any position.

- B. HRM, assisted by the supervisor, will determine the qualifications standards.
- C. All applicants shall be rated against the same standards without regard to factors such as race, color, religion, sex (including pregnancy and gender identity), national origin, political affiliation, sexual orientation, marital status, disability, genetic information, age, membership in an employee organization, retaliation, parental status, military service, or other non-merit factors.

#### Section 5      **Evaluation of Candidates.**

- A. A Human Resources Specialist will evaluate whether candidates meet the basic qualifications of the position. Then candidates will usually be rated and ranked by two or three evaluators under the technical guidance and assistance of a qualified Human Resources Specialist. However, when the Chief, Staffing and Classification Branch determines that it is not practical or feasible to utilize evaluators, qualified Human Resources Specialists will rate and rank candidates. A resume, letters of recommendation, performance appraisals, evaluation of candidates' competencies, and other characteristics related to the specific position may be used in the evaluation process.
- B. Supervisory Appraisals for Applicants who are currently Agency Employees.
  - 1. Formal performance appraisals provided in accordance with Article 16, General Workforce Performance Management, shall be considered in the evaluation process.
  - 2. Employees may examine their entire electronic Official Personnel File (eOPF).
- C. Candidates will be evaluated to identify those who rank at the top when compared with other eligible candidates who applied under the vacancy announcement. To the extent practicable, such evaluation is intended to distinguish from among all the eligible or qualified candidates those candidates whose experience, training, and expertise substantially exceed the qualifications standards to a degree that indicates such candidates, if any, are likely to perform in the position to be filled in a superior manner. This latter group will be identified as best qualified candidates.

D. Evaluators. Evaluators may be designated by a Division Director, a Deputy Assistant Director, an Assistant Director, or a Head of an Office reporting to the Director to evaluate candidates for vacancies under their cognizance. The Deputy Director and Director reserve the right to designate evaluator(s) for any vacancy in the Agency. Evaluators will receive instructions following their appointment and will be given copies of this Article. Evaluators must be experienced in the occupational field of the vacancy or be trained or skilled in the evaluation of experience, education and training at the level of the vacancy. Evaluators can be designated from within the Agency, from other governmental agencies, from industry or from academia, after consideration of potential and actual conflicts of interests. Internal evaluators must comprise the majority of the evaluation panel.

E. A qualified Human Resources Specialist from HRM will serve as technical adviser to each evaluator to assure that the principles and procedures of this Article are properly carried out.

F. The supervisor of a vacant position may not serve as an evaluator for that position. No supervisor or other employee shall in any way attempt to improperly influence personnel specialists or evaluators.

G. Policies to be used by evaluators.

1. Evaluations are to be made in accordance with merit principles.
2. Evaluators will confine themselves to the factors and their relative importance as predetermined in a formal rating schedule which shall be made part of the candidate evaluation record. Evaluation factors and their relative importance shall be applied uniformly to all candidates and made a matter of such record.
3. Final decisions may be reached by averaging evaluator scores.

## Section 6      **Certification and Selection.**

### A.      Certification.

1.      Referral of the best qualified candidates will be made on the basis of overall ratings on all evaluation factors. The group of individuals with the highest overall ratings will be the best qualified group.
2.      Evaluators or a qualified Human Resources Specialist, as the case may be, shall determine the candidates to be certified. Normally as many as ten or fewer candidates may be referred for a single vacancy.
3.      A list of the names of candidates who were certified for selection under a specific vacancy announcement will be provided to the Union upon request at any time after a selection has been made.
4.      The qualification information (as described in Section 6 of this Article) used to evaluate each candidate who is certified for selection will be forwarded to the selecting official with the certificate.

### B.      Selection.

1.      The selecting official is entitled to select or non-select from the candidates on the certificate, which normally valid until 120 days after issuance. If the selecting official elects to interview a candidate, all candidates on the certificate must be given an opportunity to be interviewed. The selecting official is expected to make his decision within a reasonable time following receipt of the certificate.
2.      The provisions of this Article are designed to provide and assure that candidates are evaluated, rated, and certified fairly, consistently, and in accordance with merit principles subscribed to by both the Union and the Agency. Therefore, the selecting official may select any candidate from a certificate which is properly issued. Failure to be selected from among a group of properly certified candidates is not a basis for a grievance or appeal.

## Article 27, **Personnel Demonstration Projects**

### Section 1      **Consultation with the Union.**

A.      Bargaining Unit employees will not be included in any personnel demonstration project under [5 U.S.C. Chapter 47](#), until there has been consultation or negotiation, as appropriate, with the Union.

### Section 2      **Documentation and Research Studies.**

A.      Prior to the Agency's official response to an inquiry from a higher-level authority concerning a personnel research program or demonstration project, the Agency will provide the Union with access to all documents relating to such an inquiry.

B.      Subject to the conditions of the Privacy Act, the Union shall be given access to all personnel research studies, by whomever conducted, and associated data, developed in response to such an inquiry or for other reasons where such studies and data involve Bargaining Unit employees in personnel demonstration projects.



## Article 28, **Reorganization and Realignment**

### Section 1      **Consultation.**

Where there is a proposed reorganization and realignment, NSF management will consult with the Union as soon as possible after the Assistant Directors or Heads of Offices reporting to the Office of the Director for the impacted organization determines that a change should be made so that the plan for such action can be developed with the benefit of consultation.

### Section 2      **Procedures.**

The following procedures and timelines facilitate the proposed implementation of reorganization and realignment:

- A.      HRM will submit the realignment package with a planned implementation date to the LRO for final review and submission to the Union. The implementation date should build in time to handle the steps below.
- B.      The LRO will notify and submit the realignment package to the Union within 10 workdays of receiving the realignment package and will schedule a union briefing.
- C.      A Union briefing will be scheduled within 15 workdays of the date the Union receives the notification and realignment package to discuss the proposed reorganization/realignment. The reorganization/realignment package should be included with the meeting invite, where possible, and will serve as formal notification to the Union.
- D.      Following the briefing, the Division will schedule a meeting with the impacted employees within 15 workdays of the Union briefing. The meeting will be to review the impending change. Any concerns submitted by the staff will be shared with the Union within 10 workdays after the employee briefing.

E. Following notification to the staff, the Union will have 10 work days to submit comments or proposals (if applicable) to Labor Relations.

F. The Union and Management will engage in Impact & Implementation negotiations, if applicable.

G. HRM/LRO will ensure proper implementation of the reorganization/realignment with leadership as necessary.

*\*Please note that it is not the Agency's intent to concede any management rights under [5 USC § 7106](#) or to circumvent any labor obligations as articulated in the CBA.*

## Article 29, **Part-Time Employment**

### Section 1      **Scope.**

The provisions of this Article apply to all NSF employees in the Bargaining Unit.

### Section 2      **Policy.**

It is the policy of the National Science Foundation to provide career part-time employment opportunities consistent with resources and mission requirements.

### Section 3      **Definitions.**

Part-time career employment means regularly scheduled work of 16 to 32 hours a week, performed by an employee who has an appointment in the competitive service or the excepted service.

### Section 4      **Change in Status of Current Position.**

- A. Employees will be afforded the opportunity to request and receive consideration to convert from full-time to part-time work schedules.
  
- B. If a full-time employee wishes to change to a part-time schedule, or vice versa, in his/her current assignment, the employee will be afforded the opportunity to request and receive consideration for such change through their immediate supervisor. Such conversion from fulltime or part-time career employment can be made only with the employee's written request and management approval, and if applicable, determination that budget permits.
  
- C. The Division of Human Resource Management (HRM) is responsible for providing guidance to managers and supervisors who are interested in establishing or converting positions for part-time employment. HRM is also responsible for advising an employee desiring a change in employment from full-time to part-time of the effects the change will have on his or her rights and benefits.

D. Managers and supervisors are responsible for reviewing the work requirements of their organizations and to consider the benefits of establishing or expanding the use of part-time positions to meet agency goals, as well as employees' needs.

**Section 5 Exclusions.**

Positions, whether part-time or full-time, which would provide a higher known grade level or promotion potential for an employee must be applied for directly by an employee in accordance with provisions of Article 24, Merit Promotion or Article 26, Excepted Positions.

## Article 30, Contracting Out Bargaining Unit Work

### Section 1      **Responsibilities.**

It is understood by the Parties to this Agreement that the function of, and policies for contracting out are not subject to collective bargaining and that this Article does not apply to assignments under the [Intergovernmental Personnel Act](#). The policy requirements for carrying out this responsibility are prescribed by Government-wide regulation. However, in exercising its responsibilities in this area, the Agency agrees to the following:

- A.      If a decision is made to contract out work normally being done by persons occupying positions within the bargaining unit, the Agency management will notify the Union as early as possible.
  
- B.      When a determination to contract out adversely impacts employees in the bargaining unit at NSF, the Agency will, to the extent consonant with law, negotiate with the Union, upon timely request, over impact or appropriate arrangements for the employee(s) so affected. If a reduction in force results from a decision to contract out work previously done by members of the bargaining unit, the Agency, in accordance with the article on “Reduction in Force”:
  - 1.      Will make serious attempts to place surplus personnel in suitable positions;
  - 2.      Will, where appropriate and within the budget limitations, provide training to affected employees to assist them in qualifying for other positions within the Agency; and
  - 3.      Will, in accordance with Section 6. (of the article on “Reduction in Force”), consider training such employees for positions in other agencies.
  
- C.      In this connection, NSF will furnish, pursuant to [5 U.S.C. 7114\(b\)\(4\)](#), to the Union upon request data or documents which formed the basis for the decision where disclosure is not restricted by laws and Government-wide regulations.

D. If there is any formal written evaluation of the work under such a contract while underway or upon completion, the Union will be furnished a copy.

**Section 2      Supervision.**

The Agency also agrees that members of the bargaining unit at NSF will not be under the supervision of contractor personnel.

## Article 31, Consultants and Experts

### Section 1      **Purpose.**

The Parties recognize and acknowledge that the accomplishment of the Agency's mission benefits from the use of consultants and experts, and that the utilization of consultants and experts helps to improve Agency service and to strengthen its activities.

### Section 2      **Definition of Consultants and Experts.**

For the purposes of this Article, consultants and experts means those individuals who are appointed with or without compensation, on an intermittent basis, and designated by official title as Consultant or Expert.

### Section 3      **Use of Consultants and Experts.**

The Union and the Agency agree that consultants or experts shall not be employed:

1. To perform full-time continuous work, but as a resource to provide skills, abilities and knowledge not readily available in the workforce;
2. To avoid the competitive merit staffing procedures established in Article 24 of this Agreement; or
3. To supervise or to carry out operational work that is performed by positions within the Bargaining Unit.

## Article 32, Equal Employment Opportunity

### Section 1      **Support of EEO Program.**

The Agency and the Union agree to actively support the objectives of the Equal Employment Opportunity (EEO) Program by exercising positive and affirmative leadership within the respective areas of responsibility in all matters pertaining to EEO. The Union agrees to make the Agency aware of any patterns and trends to include discrimination and sexual harassment that impedes an inclusive work environment. The Agency agrees to conduct a fact finding of the Union's notification. The Agency will share the fact findings and analysis with the Union to achieve an amenable resolution that supports an inclusive work environment.

### Section 2      **Acts of Discrimination.**

The Agency prohibits discrimination on the basis of race, color, religion, national origin, sex (including gender identity, sexual orientation, sexual harassment, and pregnancy), age, disability, or genetic information in employment of all work-related activities, facilities and services operated, sponsored or participated in by the Agency. In cases where such discrimination is found, the Agency will take appropriate corrective action using applicable directives including established personnel procedures.

### Section 3      **Administration of EEO Program.**

A.      In accordance with [29 CFR Part 1614](#), the Office of Diversity and Inclusion (ODI) will effectively administer and perform all program aspects in the EEO Program. The policy statement on Equal Opportunity and the Prevention of Harassment will be issued annually and made available to all employees through posting on the ODI website reflecting the Agency commitment and procedures to attain EEO goals.

B.      The Agency will carefully, justly, and expeditiously consider and adjudicate complaints of discrimination filed through the negotiated grievance procedure or the EEO complaint process.



- C. A complainant has the right to be accompanied, represented and advised by the Union or another representative in accordance with the grievance and representation provisions of this contract during EEO counseling, Alternative Dispute Resolution (ADR) procedures, or at any stage of the complaint process and the EEO representative will so inform the employee.
- D. The Agency will comply with the requirements of the Federal Equal Opportunities Recruitment Program ([5 CFR, Part 720](#)).
- E. Within the limits of existing laws and the rules and regulations of authorities outside of the Agency, the design and implementation of the Agency's EEO Plan to Eliminate Identified Barriers required by [EEOC Management Directive 715](#) (Reporting Requirements for Federal Agencies) will include goals and timetables in accordance with EEOC requirements. The Union will have up to twenty (20) calendar days to review and provide comments for ODI's consideration on the agency's annual report, before its approval.
- F. Annually, the Agency will post the EEO Plan to Eliminate Identified Barriers required by EEOC Management Directive 715 (Reporting Requirements for Federal Agencies) and EEO related No Fear Report on the agency internal and external website.
- G. Employee orientation programs will include a description of the Agency's EEO, Civil Rights Programs, and all services provided by ODI.
- H. The Agency will provide EEO and Civil Rights training for all employees.

## **Article 33, Occupational Health and Safety**

### **Section 1      Work Environment.**

The Agency will endeavor to provide a safe and healthful work environment for all employees, using applicable regulations as a guide.

### **Section 2      Reporting Unsafe Conditions.**

All employees, supervisors, and management officials are responsible for prompt reporting of observed unsafe conditions to his or her supervisor and/or the NSF Safety and Occupational Health Manager.

### **Section 3      Employee Advice.**

The Agency shall provide prompt advice and counseling to any employee(s) involved in an accident as to benefits which may be available to the employee(s).

### **Section 4      Personal Protective Equipment.**

Personal Protective Equipment (PPE) as required by regulation shall be furnished by the Agency and used by employees.

### **Section 5      Workplace Inspections.**

The Agency agrees that a designated Union representative may accompany inspections of workplaces.

### **Section 6      Abatement of Unsafe Conditions.**

The Agency agrees to work with the General Services Administration (GSA) and building management to provide prompt abatement of unsafe or unhealthful working conditions. When this cannot be accomplished, the Agency agrees to develop in consultation with the Union a summary of interim steps to protect employees. This may include relocation, telework, or administrative leave. Employees exposed to the conditions will be informed of the interim steps.

**Section 7      NSF Safety and Health Committee.**

The Agency will maintain a NSF Safety and Health Committee. There will be an equal number of Union and Management representatives (not including the Chair).

**Section 8      Health Services.**

To the extent practicable, the Agency agrees to continue to provide a variety of health services through the Health Unit to employees of the Bargaining Unit.

**Section 9      Emergency Procedures.**

The Agency agrees to develop procedures and use its best efforts to provide appropriate assistance to temporarily or permanently disabled employees during emergency evacuations. Employees are strongly encouraged to inform their directorate-level Facility Emergency Response Team (FERT) representative of any assistance that would be required during an emergency.

## Article 34, **New Technology**

### Section 1      **Notification.**

When the Agency proposes to acquire or implement a new information technology system or components for an existing system, including hardware, software, support systems, and services that are expected to adversely impact Bargaining Unit employees, the Agency will notify the Union of the proposed change and its justification, subject to negotiation over the implementation of the change and adverse impact on Bargaining Unit employees.

### Section 2      **Understanding the Proposed Change.**

Accompanying the notification by the Agency to the Union, the unit within the Agency responsible for the proposed change will address the following five questions to aid in understanding the proposed change:

1.      What is the proposed implementation date?
2.      Who will be impacted by this change?
3.      How will this change impact staff? What will the employee do differently once the change occurs that they do not do now? Will this change take the place of an existing way we do things?
4.      Why is it necessary to make this change?
5.      Describe the procedures that will be used to implement this change.

## Article 35, Union-Management Committees

### Section 1      **Purpose.**

The Parties agree to establish at the request of either party joint Union-Management (U-M) Committees on an ad hoc basis to address an identified union-management issue which is Bargaining Unit wide in scope. These Committees shall provide a mechanism to further facilitate the exchange of ideas and information between the Union and the Agency. Each such Committee will be established and chartered based on demonstrated need to discuss and to seek mutual understanding of the matter assigned to it and to make specific recommendations relative thereto.

### Section 2      **Chartering a U-M Committee.**

The following are items to be considered for chartering a U-M committee:

1.      **Official Title.** A descriptive title of the committee.
2.      **Objective and Scope.** Explains the committee's purpose and what it hopes to accomplish. Topics of a U-M Committee will consist of an issue of broad scope; neither Union nor Agency management grievances, nor matters pertaining to individual employees such as grievances, complaints or disputed within-grade determinations, will be referred to such a Committee for consideration. It is agreed that, as appropriate, such a U-M Committee may consider matters of concern which are within the authority or control of the Agency affecting general working conditions of employees in the Bargaining Unit.
3.      **Committee Responsibilities.** U-M Committees established under this Article are only advisory in nature.
4.      **Membership.** A U-M Committee shall consist of no more than three (3) persons designated by the Union and no more than three (3) persons designated by the Agency.
5.      **Roles and Responsibilities.** Each Party will appoint one of its (3) three members to serve as the chairperson of its delegation, and Committee meetings shall be chaired alternately by the chairperson of each party, in turn, beginning with the Union's chairperson, unless otherwise agreed to by the membership of the Committee.

Identifying who is going to do what and responsibilities of the team is useful for setting expectations and letting members know what is required.

6. **Duration.** The chairpersons shall agree upon the length of time the U-M committee will exist, with the aim of timely development of recommendations and dissolution of the U-M Committee.

7. **Meetings.** Either parties' chairperson may request a meeting and propose items for discussion. Items for discussion shall be submitted by the requesting chairperson to the other party at least five (5) working days in advance of a proposed meeting, unless a shorter time period is mutually agreed upon by the chairpersons.

- a. Topics shall be mutually agreed upon by the chairpersons and organized into an agenda for the meeting.
- b. The Agency will provide facilities for meeting of U-M Committee.
- c. Meetings of such a U-M Committee shall be held during duty hours.
- d. Attendance at Committee meetings will be limited to Committee members; other individuals who can make a contribution to the proceedings may be invited to attend, by mutual agreement of the chairpersons.

8. **Outcomes.** Recommendations developed by the U-M Committee will be transmitted to the Office of the Director and Union President by the Labor Relations Officer.

## Article 36, **Parking**

### Section 1      **Space Allocation.**

A.      Access to the parking garage will be restricted to federal employees and allocated based upon availability of spaces in priority order per 41 CFR 102-74.305:

1. Federally-owned or leased vehicles
2. Severely disabled employees
3. Executive personnel
4. Vanpool/carpool vehicles
5. Privately owned vehicles of employees

B.      Priority group allocations are as follows:

1.      Federally-owned or leased vehicles: The Agency has six (6) vehicle parking spaces set aside in the building lease for official Government use (Category 1 above). These spaces will not be included in any parking selection process.

2.      Severely disabled employees: Disabled employees as defined by the [41 CFR 102-71.20](#) means "an employee who has a severe, permanent impairment that for all practical purposes precludes the use of public transportation, or an employee who is unable to operate a car as a result of permanent impairment who is driven to work by another." Employees who fit these criteria will have to self-identify to the Office of Diversity and Inclusion and provide appropriate documentation. Any severely disabled employees who are not allocated access to the parking garage upon request, due to lack of available space, will be placed on a waitlist based on priority and provided access as soon as access becomes available.

3.      Executive personnel: The Agency will set aside no more than eight (8) vehicle spaces for Executive Personnel (Category 3 above). Executive personnel are defined as Federal Assistant Directors and Federal Office Heads at NSF.

4.      Vanpool/carpool: Vanpools are defined as having at least eight (8) NSF employees per passenger van. Carpools are defined as a group of two (2) or more NSF employees per car. Vanpool/carpool registration for parking purposes will require identification of the pool members and will be tracked by the Division of Administrative Services (DAS). If vanpool/carpool applications cannot be accommodated upon receipt

due to a lack of available space, they will be added to the waitlist (in priority order). Vanpools/carpools will require annual recertification and may be subject to random verification.

5. Wait listing: Severely disabled employees and vanpools/carpools will be identified on the waitlist and will be given priority in accordance with the CFR cited above.

6. Space available privately-owned employee vehicles: The number of remaining spaces will equal the number of Agency Federal employees that can be provided access to the garage. Any applicant not afforded access to the garage due to a lack of available space will be waitlisted in the order of which their applications were received.

C. Employees who have been approved as participants in carpools/vanpools are ineligible for additional parking in the garage.

D. Employees who are scheduled to be in the office six (6) or fewer days per pay period due to an approved telework or alternate work schedule are ineligible to park in the garage.

E. Should NSF adjust the monthly cost for parking in the garage in a way that it anticipates will significantly increase the number of parking applications, access for additional privately-owned employee vehicles will be allocated via random assignment.

## **Section 2 Payment.**

Parking payment will be made directly to the Parking Management Company (PMC). The PMC's responsibility will include monthly billing/collecting services and general housekeeping for the parking area. The PMC will report to the DAS the list of employees with active parking privileges on a monthly basis. An employee's failure to pay parking fees in a timely manner will not be subject to any personnel action but will result in the revocation of access to the parking garage after 30 days of nonpayment.

## **Section 3 Access.**



As part of the Agency security perimeter, access to the garage will be controlled by the use of PIV cards. Permissions to access the garage will be granted by NSF Security based upon the monthly employee list provided by the PMC.

#### **Section 4      Bicycle Cage.**

NSF employees may use the designated secured bicycle cage in the parking garage at no cost upon requesting access from the DAS Parking Coordinator. Cyclists will present their NSF PIV cards to the Protective Security Officer on duty to enter the garage. Bicycle cage spaces will be provided on a space available, first come/first serve basis.

#### **Section 5      Motorcycle Parking.**

Motorcycle Parking: Ten (10) parking spaces will be allocated for motorcycle parking.

#### **Section 6      Electric Vehicle Charging.**

Electric vehicle charging stations are provided in the garage on a first-come, first-served basis. Electric/hybrid vehicles may only be charged at these stations.

## Article 37, Duration and Changes

### Section 1      **Agreement.**

A.      This Agreement defines the complete agreements and understandings between the Parties. The provisions of the Agreement and any amendments or supplements thereto as may subsequently be executed by the Parties shall, as appropriate, apply to employees within the bargaining unit in the Agency for which the Union is the exclusive representative.

B.      All staff of the Agency are governed by existing or future laws, orders, and the rulings and regulations of authorities outside of the Agency; and by existing agency policies, practices, and regulations except as modified by this Agreement, or as subsequently agreed to.

### Section 2      **Duration.**

This Agreement shall remain in full force and effect for four (4) years from the effective date thereof and shall thereafter be automatically renewed for successive two (2) year periods unless written notice is given by either Party to the other, not less than sixty (60) calendar days or more than one-hundred and five (105) calendar days prior to the expiration of the original contract period, or prior to the expiration of any renewal, that the requesting Party desires to terminate the Agreement.

### Section 3      **Mid-term Reopener.**

A.      During the twenty-fourth month of this Agreement either Party may initiate negotiation of up to five (5) Articles or issues. These may be reopened existing Articles and/or newly proposed Articles. The proposing Party will deliver to the other Party specific written proposals for inclusion. The twenty-fourth month shall be determined by applying the following example: if the effective date of this contract were February 28, 2020, then the twenty-fourth month would start on February 28, 2022, and end on March 30, 2022.

B.      The Party receiving the proposal or proposals may respond at any time up to the end of the twenty-fifth month of this Agreement by delivering to the initiating party specific written proposals for negotiation of up to five (5) additional Articles or issues and is not limited to a one-for-one response.

C. The Parties will commence negotiations on the proposals within 15 calendar days following delivery of the responding Party's proposals, if any, or by the fifteenth day of the twenty-sixth month of this Agreement, whichever occurs first (see [Appendix B](#)).

#### **Section 4 Mid-Term Bargaining.**

A. When, during the life of this Agreement, changes to personnel policies, practices, or conditions of employment are required because of changes in any laws, orders, rules, or regulations of authorities outside the Agency, such changes shall be binding on all officials and employees of the Agency.

B. Either party may reopen negotiations on changes in conditions of employment and will adhere to applicable laws, rules, regulations, and not waive its right.

C. Any changes to rules or regulations, with respect to conditions of employment of bargaining unit employees, or amendments to this Agreement which are negotiated and agreed to pursuant to this Section will be duly executed by the Parties in a Memorandum of Understanding and will become an integral part of this Agreement and subject to all the terms and conditions of this Agreement.

#### **Section 5 Mid-Term Bargaining Procedures.**

A. The procedures contained in this section constitute the ground rules for all negotiations under Section 4. Midterm bargaining (i.e., employer-initiated changes involving substantive or impact/implementation bargaining, and Union initiated midterm bargaining) and excludes Mid-term Reopener.

B. In issuing, revising or canceling rules and regulations relating to personnel policy, practices, procedures and matters affecting conditions of employment, the Agency shall give due regard to the obligations imposed by applicable laws, rules, regulations, and this Agreement. Before making changes to bargaining unit employees' conditions of employment, or otherwise changing personnel policy or practices, the Agency shall provide the Union with written notice of the proposed change(s). Specific procedures to be used pursuant to this Article are as follows:

1. **Agency Initiated Request**

For Agency initiated changes, the Union will be provided with reasonable advance written notice, not less than ten (10) calendar days. The initial notice will, at a minimum, contain the following information:

- a. A statement of the existing written policy, schedule, process, structure or organizational chart;
- b. A statement and description as to the nature and scope of the proposed change;
- c. An explanation of why the proposed change is necessary;
- d. If the proposed change is directed by an outside authority, the documentation from that authority, except to the extent such disclosure is prohibited by applicable law;
- e. The number and location of employees the Agency anticipates will be affected;
- f. The proposed implementation date; and
- g. The name and title of the Agency official.

2. **Union Response to Agency Notice**

If in response to an Agency Notice, the Union desires to bargain, receive a briefing or waive, it must submit a response to the Agency within ten (10) calendar days of receipt of the notice. Failure to submit a timely response shall constitute a waiver on the part of the Union. Upon request, the Union will provide information such as:

- a. An explanation of the Union's plans for implementing this change;
- b. How the Union expects these employees will be affected.

After the notice, the Union will then have five (5) additional calendar days to provide the Agency with its proposal of the proposed change. Upon request, a meeting will be scheduled for a briefing or bargain session within seven (7) calendar days of the Agency's receipt of the Union's proposals.

3. **Notice of Union Initiated Request**

If proposed by the Union, the Agency will be provided with reasonable advance written notice, not less than ten (10) calendar days. The initial notice will, at a minimum, contain the following information:

- a. A statement and description as to the nature and scope of the proposed change;
- b. An explanation of the expected benefit of the proposed change; and
- c. To the extent known by the Union, the location of employees affected.

4. **Agency Response to Union Request**

Upon a Union initiated request to bargain in connection with a matter for which a duty to bargain exists, the Parties shall schedule bargaining to begin no later than fourteen (14) days from the time of receipt by Management of the Union's request.

C. **IMPASSE:** Impasses in negotiations shall be resolved by recourse to the provisions of Section 7119 of the Federal Service Labor-Management Relations Statute. The Parties shall be deemed to be at impasse at the conclusion of thirty (30) calendar days, unless the Parties mutually agree otherwise. However, either Party or both Parties jointly may declare an impasse prior to the completion of thirty (30) days. Either Party may request the FMCS to provide mediation services within ten (10) days after the impasse. The mediator shall be the sole judge of the procedures to be followed in attempting to resolve impasses.

1. **Submission to the Panel:** Any impasse not resolved through the FMCS may be submitted within ten calendar days by either Party to the FSIP to consider the matter under its regulations.

2. **Postponement of Implementation:** Other than an emergency, implementation shall be postponed allowing for the completion of bargaining, including impasse proceedings, except as required by law.

**Section 6 Agency Head Review.**

Any agreements resulting in Memorandum of Understandings made between the Parties that add to, or take away from the Parties' agreement, must be submitted for Agency Head Review pursuant to the requirements of this article.

**Section 7      Union Notices Other Than Formal Meetings Involving Impact and Implementation.**

A.      The Union will be given the opportunity to be represented at all formal discussions as defined in 5 U.S.C. § 7114(a)(2)(A).

B.      The Labor Relations Officer will notify the Union in writing of any scheduled meetings such as All Hands requiring employee's attendance.

1.      The Union will be given five (5) calendar days advance notice of the meeting unless emergent circumstances require a shorter period. In such cases, the Labor Relations Office will notify the Union as far in advance of the meeting as reasonably possible.

2.      Notice shall go to the Union President and courtesy copying all Executive members of AFGE, Local 3403. If available, the notice shall include an agenda and a copy of any written materials that will be distributed at the meeting.

3.      The Union will inform the Labor Relations Office if a Union representative will attend and provide the name of the designated Union representative.

4.      Failure to designate a Union representative in advance does not preclude a Union representative from participating in the meeting.

5.      If a representative does attend, the Union representative will introduce themselves to the person(s) running the meeting prior to the start of the meeting.

6.      If requested, the Union representative will be provided an opportunity to introduce themselves at the start of the formal discussion and announce they are speaking on behalf of the Union.

7.      The Union representative will not interfere with or disrupt the meeting or its purpose.

# Appendix A: Determination of Appropriate Units for Labor Organization Representation



## UNITED STATES OF AMERICA FEDERAL LABOR RELATIONS AUTHORITY

**NATIONAL SCIENCE FOUNDATION  
(Agency/Petitioner)**

**and**

**AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 3403, AFL-CIO  
(Labor Organization)**

**CASE NO. WA-RP-18-0064**

### AMENDED CERTIFICATION OF REPRESENTATIVE

Pursuant to the provisions of Chapter 71 of Title 5 of the United States Code, and the Rules and Regulations of the Federal Labor Relations Authority, the National Science Foundation and the American Federation of Government Employees, Local 3403, AFL-CIO jointly filed a petition seeking to amend the description of the bargaining unit.

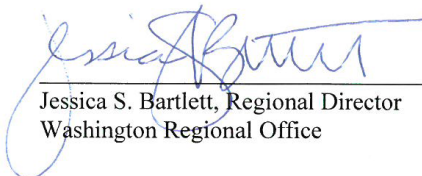
On September 20, 2018, I issued a Decision and Order finding the Certification granted to the American Federation of Government Employees, Local 3403, AFL-CIO on October 9, 1975, in Case No. 22-3870(RO) may be amended as the parties have agreed in their joint stipulation. The parties have waived their right to file an application for review of the Decision and Order.

Pursuant to authority vested in the undersigned,

**IT IS HEREBY CERTIFIED** that the American Federation of Government Employees, Local 3403, AFL-CIO is the exclusive representative of the following unit:

Included: All professional and nonprofessional employees of the National Science Foundation.

Excluded: Management officials, supervisors, temporary employees of less than 90 days, guards, and employees described in 5 U.S.C. 7112(b)(2),(3),(4),(6) and (7).

  
Jessica S. Bartlett, Regional Director  
Washington Regional Office

Dated: September 20, 2018

## **Appendix B: MEMORANDUM OF UNDERSTANDING between National Science Foundation and American Federation of Government Employees, Local 3403, AFL-CIO on Ground Rules for Negotiating the Mid Term Reopener**

### **Section 1 Preamble.**

A. This Memorandum of Understanding (MOU) is entered into by and between the National Science Foundation (Agency) and AFGE Local 3403 (Union), pursuant to the provisions of the Federal Service Labor-Management Relations Statute, [5 U.S.C. § 7101](#), *et seq.*, for the purpose of establishing procedures to negotiate the Collective Bargaining Agreement (“CBA” or “Agreement”).

B. This MOU is to be interpreted in accordance with all applicable laws, rules, and regulations. These ground rules are not anticipated to address every item that may arise during the negotiation process and may be altered or modified by the written agreement of both parties.

C. This MOU shall govern the procedures for negotiating a CBA between the Parties covering the bargaining unit established on October 9, 1975 by the Federal Labor Relations Authority, Case No. 22-38, and amended on September 20, 2018, Case No. WA-RP-18-0064.

### **Section 2 Terms and Conditions of Employment Pending Negotiations.**

The current CBA edition, reflecting all amendments, approved through February 28, 2022, and all Memoranda of Understanding currently in full force between the Parties shall remain in effect until a new CBA goes into effect.

### **Section 3 Bargaining Teams.**

A. Up to four (4) permanent negotiation team members and one notetaker/scribe representing the Union and up to four (4) permanent negotiation team members and one notetaker/scribe for the Agency will be designated for CBA negotiations. The Union and the Agency will designate which individuals will work on this task and inform each Party of the names of the individuals under this section in advance of negotiations.



B. The Agency and the Union agree to allocate time to Union and Agency individuals as is reasonable and necessary to negotiate the CBA to final agreement.

C. Each Party will designate a Chief Negotiator and an alternate Chief Negotiator who may act in the absence of the Chief Negotiator.

D. It is understood that the Chief Negotiators (or alternate) for the Union and Agency shall have the primary authority to speak for or enter into agreement on behalf of their respective organization.

E. The Chief Negotiators will recognize other team members or authorized participants to answer questions or discuss matters raised during negotiations.

F. Each Party may have subject matter experts (SMEs) attend specific negotiating sessions for the purpose of presenting information that will help the Parties resolve issues. At the discretion of the Chief Negotiators, SMEs may remain until the negotiation on that topic is concluded in order to provide clarification as needed.

#### **Section 4      Responsibility of the Chief Negotiators.**

It is understood and agreed to by the Union and Agency that both Parties will come to the table with authority to bargain in good faith as required under [5 U.S.C. § 7117](#).

The Chief Negotiators are responsible for:

1. Maintaining order during all discussions,
2. Calling all Caucuses,
3. Scheduling meal periods,
4. Determining the starting and quitting times for all negotiating sessions,
5. Initialing and dating agreed-to sections and articles. Each side will maintain a copy of all such initialed provisions,
6. Maintaining any necessary communication between the Parties between the negotiating sessions.

7. Maintaining negotiation session substance within “need-to-know” as defined by each Party.

## **Section 5 Bargaining Procedures.**

- A. While initial proposals should be provided in writing in electronic format and in hard copy for clarity, nothing in these Rules shall prevent the Parties from engaging in any kind of Interest Based Bargaining or hybrid thereof where the Parties may work from written proposals and attempt to surface the underlying issues in order to facilitate agreement on contract language.
- B. The Parties will exchange their initial proposals thirty (30) days from the execution of the Agreement. Initial proposals will be sent to the Union’s Chief Negotiator and the Agency via Word email attachment.
- C. Proposals will be identified as either Union or Agency and be numbered successively. As each proposal is taken up, the Party offering that proposal will explain it, and will at a minimum, provide the meaning and intent of the proposed language. The Parties will be provided ample opportunity for questions and answers, additional information, and other discussion. The Parties will follow this procedure in a good-faith effort to reach agreement.
- D. Either party may submit additional proposals or amend its existing proposals throughout the course of negotiations. Each proposal and counter proposal must be discussed face-to-face unless otherwise agreed to by the Chief Negotiators in writing.
- E. Proposals, or any part of a proposal, will be negotiated until an agreement is reached or tabled. Chief Negotiators will schedule further negotiations of tabled proposals or parts of proposals.
- F. These ground rules are designed to assist the Parties in negotiations and may not prohibit a proposal or counter proposal whether in the form of a single issue or package of issues.

G. Both Parties will strive to make the language in the CBA as clear, simple, and understandable as possible so that all NSF staff will understand and recognize the rights and responsibilities of the Agency, Union and NSF staff.

H. As Sections are tentatively agreed to, the Chief Negotiators will initial, and date two copies of the proposal and the proposing party will write down the intent of the language, which will be initialed by both Chief Negotiators.

I. When tentative agreement is reached on an entire article, the Chief Negotiators will provisionally sign and date two copies of each page. Each Chief Negotiator will retain a copy. The Chief Negotiators are jointly responsible for ensuring that the signed article is consistent with any previously initialed sections or signed articles. Each Chief Negotiator will retain one copy.

J. Once a section/article is initialed/signed, it will not be subject to further discussion or amendment unless it is necessary to revisit the language, e.g., to ensure consistency and equity with a later-bargained section/article.

K. Recording devices (i.e. cell phones/tablets/iPads) will not be used in the negotiations, nor will verbatim transcripts or formal minutes of the proceedings of any negotiation session be made, unless specifically agreed upon in writing by the Chief Negotiators.

L. Either Party may call a caucus at any time and will leave the negotiating room to caucus at a suitable proximate site provided by the Agency. There is no limit on the number of caucuses which may be held, but each Party will make every effort to restrict the number and length of caucuses. The party calling the caucus will estimate the length of time needed.

M. The Chief Negotiators will agree upon a time to reconvene and communicate if any adjustment is needed to the projected time.

N. The Agency will provide a room for the Agency or Union to caucus in close proximity to the negotiation room.

**Section 6      Bargaining Schedule.**

A.      The Parties agree to comply with [5 U.S.C. § 7101\(b\)](#) and [5 U.S.C. § 7114\(b\)\(1\)](#) and (3). To this end, the Parties will “approach negotiations with a sincere resolve to reach a collective bargaining agreement” and “meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays.”

B.      The Parties will meet within two (2) weeks following the exchange of proposals by email. This meeting will be devoted to discussion of the general substance of each Party’s proposals.

C.      Following the meeting to discuss proposals, the Parties agree to meet weekly until the Parties have discussed each proposal in each Article and made an earnest effort to reach agreement, but no longer than for a period of 6 (six) months. By mutual agreement of the Union’s Chief Negotiator and the Agency, the Parties may decide, in a given month, to meet during a time other than as established above. During that week of negotiations, the Parties will follow the schedule provided in Section 6.D. The Parties also understand that if they agree to alter the schedule in this manner, they will then revert back to the original schedule.

D.      For the weeks in which the Parties meet, meetings will take place from 12 p.m. to 3:30 p.m. on Wednesday. These schedules may be changed upon mutual agreement of the Union’s Chief Negotiator and the Agency. The Parties are expected to be punctual and remain at the table throughout bargaining.

E.      Any session may be extended or terminated by mutual agreement of the Union’s Chief Negotiator and the Agency. Lunches and breaks will be scheduled by mutual agreement of the Union’s Chief Negotiator and the Agency.

F.      No negotiations will be held on Federal Holidays. The schedule will continue until one Party notifies the other that assistance of a mediator from the U.S. Federal Mediation and Conciliation Service (FMCS) has been requested.

**Section 7      Negotiability.**

A. If the Agency asserts that it is not obligated to negotiate on a particular matter, the Agency will provide the Union, upon request, a written explanation on the matter on which it believes it has no duty to bargain under the Statute in accordance with Federal Labor Relations Authority (FLRA) rules. The Parties are free to take appropriate action in response.

B. In the event a negotiability appeal or Unfair Labor Practice is filed by either Party, the Chief Negotiators shall discuss and must mutually agree to sever or table the matter that is the subject of such proceeding until that matter is adjudicated.

**Section 8      Impasse Resolution.**

A. An impasse is reached when, after several genuine negotiating attempts, neither Party is willing to modify its proposal to the extent that agreement will be reached. Before impasse is declared, both Parties will exchange their last best offer in writing with a full explanation of their position.

B. If the Parties cannot agree on a particular section, that section will be tabled, and the negotiations will proceed.

C. After the Parties have negotiated all of the remaining proposals, they will return to tabled sections and make a good faith effort to reach agreement on those sections. However, by agreement, the Parties may reconsider a tabled section at any time.

D. In the event an Agreement still cannot be reached, either Party, after notifying the other Party in writing, shall simultaneously present all matters that remain at impasse at the end of negotiations to the Federal Mediation and Conciliation Service (FMCS) for mediation. If impasse settlement cannot be reached through mediation with the FMCS, either Party may refer the issue(s) at impasse to the Federal Service Impasses Panel (FSIP) for resolution in accordance with [5 U.S.C. § 7119](#).

**Section 9      Ratification, Execution, and Agency Head Review.**

A.      After all proposed Articles and Sections have been either initialed or withdrawn by the Parties, the Chief Negotiators, or their designees, will review the CBA for accuracy and completeness. Once reviews are completed, the Union will have 30 calendar days to complete its ratification process.

B.      The CBA will not be subject to ratification by AFGE Local 3403 and approval by the Agency Head until all impasse issues are fully adjudicated by the Federal Service Impasses Panel (FSIP).

C.      If the Agreement is not ratified, the Parties will return to negotiations within 15 calendar days, exclusive of holidays, starting from the conclusion of the Union ratification process to attempt to renegotiate the unsettled issues pursuant to these Ground Rules. The Union will have 30 calendar days for ratification of all subsequent agreements.

D.      Once the Parties agree to language, the Chief Negotiators will execute the completed agreement by signing it.

E.      Once the Agreement is executed, the Agency will have 30 calendar days to complete Agency Head Review pursuant to 5 U.S.C. § 7114 (c).

F.      If the Agency Head disapproves the Agreement or any portion of the Agreement, the Chief Negotiators will be notified, in writing, including which provisions were found to be contrary to law or government-wide rule or regulation, with a written explanation as to why.

G.      The Chief Negotiators will meet within fourteen (14) calendar days from the date of any such notification to arrange negotiations in an effort to reach agreement.

**Section 10      Effective Date of the Agreement and Duration of these Ground Rules.**

A.      The Agreement will go into effect on the date it is approved by the Head of the Agency, in accordance with the law and these Ground Rules.

B. If the Head of the Agency takes no action within 30 calendar days after the Agreement is executed (signed by both Parties involved), it will go into effect upon the 31st day.

C. The effective date of the CBA will be clearly stated on the cover page of the Agreement.

D. These Ground Rules shall terminate on the effective date of a new CBA between the Parties.

For the Agency,

For the Union,

_____	_____	_____	_____
TBD	Date	TBD	Date
Chief Negotiator		Chief Negotiator	
		AFGE, Local 3403	

## Appendix C:

Addendum to the Collective Bargaining Agreement  
Between AFGE, Local 3403  
and  
National Science Foundation on  
Pilot Program for Alternative Dispute Resolution

The National Science Foundation (Agency) and the American Federation of Government Employees, Local 3403 (Union) enter into this agreement concerning a Pilot program for location of the Alternative Dispute Resolution program in the NSF Office of Diversity and Inclusion (ODI). The Parties enter into this agreement freely and voluntarily.

**PARTIES AGREE TO THE FOLLOWING:**

1. ODI will pilot ADR for up to four (4) year after the ratification of the CBA at which time the parties will evaluate utilization and perceived success of the pilot.
2. Agency will provide space and resources to ODI as needed to execute the pilot.

Nothing in the agreement shall be construed as a waiver of the current collective bargaining agreement or other rights.

For the Agency,

For the Union,

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Chief Negotiator

---

Date

---

President  
AFGE, Local 3403

---

Date



## EXECUTION OF AGREEMENT

This collective bargaining agreement was negotiated by the Parties in accordance with 5 U.S.C. 7114. The following representatives of the Parties agreed to and signed this agreement on February 28, 2020.

### Agency

### AGFE, Local 3403

\_\_\_\_\_  
Director

\_\_\_\_\_  
President/Chief Negotiator

\_\_\_\_\_  
Chief Negotiator

\_\_\_\_\_  
Chief Steward

\_\_\_\_\_  
Chief Negotiator

\_\_\_\_\_  
Treasurer

\_\_\_\_\_  
Chief Negotiator

\_\_\_\_\_  
Recorder

\_\_\_\_\_  
Labor Relations Officer

\_\_\_\_\_  
Recorder